HOUSE OF REPRESENTATIVES

Friday, October 10, 1997

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I wish to advise that I have received communication from three Members who have asked to be excused from today's sitting: Mr. Gordon Draper, Member for Port of Spain North/St. Ann's West; Dr. Keith Rowley, Member for Diego Martin West; and Mrs. Camille Robinson-Regis, Member for Arouca South. They are excused.

OMBUDSMAN'S REPORT (NINETEENTH)

Mr. Speaker: I also wish to advise hon. Members that I have received from the office of the Ombudsman of the Republic of Trinidad and Tobago, the 19th Annual Report and in accordance with section 96(5) of the Constitution of the Republic of Trinidad and Tobago, this will be laid on the Table of the House.

OCCUPATIONAL SAFETY AND HEALTH BILL (JOINT SELECT COMMITTEE)

Mr. Speaker: I wish also to advise that I have received communication from the Vice-President of the Senate dated October 8, 1997 which reads as follows:

"Honourable Speaker,

I wish to refer to your letter to the President of the Senate dated August 20, 1997 and advise that at a sitting of the Senate held on Tuesday October 07, 1997, the Senate agreed to the following resolution which was moved by the Leader of Government Business.

'BE IT RESOLVED:

That a Bill entitled 'An Act respecting the safety, health and welfare of persons at work' be referred to a Joint Select Committee of Parliament whose mandate would be to consider this Bill and to report to the Parliament at the earliest opportunity, and that this Joint Select Committitee

be empowered to discuss the general merits and principles of this Bill, as well as its details.'

At the said sitting, the Senate nominated the following Members to serve on the Joint Select Committee to consider and report on the Bill:

Mr. Joseph Theodore

Mr. Finbar Gangar

Mr. Andrew Gabriel

Prof. Julian Kenny

Mrs. Diana Mahabir-Wyatt

Mr. Mahadeo Jagmohan

The information is accordingly forwarded for the attention of the House of Representatives.

Yours faithfully
s/ P. Hamel-Smith
Vice-President of the Senate."

PAPERS LAID

1. Report of the Auditor General on a Special Audit of the Information Division of the Ministry of Public Administration and Information. *[The Attorney General (Hon. Ramesh Lawrence Maharaj)]*

2. Report of the Auditor General on the public accounts of the Republic of Trinidad and Tobago for the year ended December 31, 1996 and on other Selected Audit Activities. *[Hon. R. L. Maharaj]*

3. Report of the Auditor General on the accounts of the Public Utilities Commission for the year ended December 31, 1996. *[Hon. R. L. Maharaj]*

4. Report of the Auditor General on the accounts and financial statement of the Basic Education Project for the period June 01, 1995 to December 31, 1996 as required by Loan Contract No. 3956-TR between the Government of the Republic of Trinidad and Tobago and the International Bank for Reconstruction and Development. *[Hon. R. L. Maharaj]*

Papers 1 to 4 to be referred to the Public Accounts Committee.

5. Report of the Supervisor of Insurance for the year ended December 31, 1996. *[Hon. R. L. Maharaj]*

6. The Annual Audited Accounts for Urban Development Corporation of Trinidad and Tobago Limited for the year ended December 31, 1996. *[Hon. R. L. Maharaj]*

Papers 5 and 6 to be referred to the Public Accounts (Enterprises) Committee.

QUARRY SUPERSTARS SPORTS AND CULTURAL CLUB (INC'N.) BILL

SELECT COMMITTEE REPORT

Presentation

The Parliamentary Secretary in the Ministry of Works and Transport (Mr. Chandresh Sharma): Mr. Speaker, I wish to present the report of the Special Select Committee of the House of Representatives appointed to consider and report on the private Bill for the incorporation of the Quarry Superstars Sports and Cultural Club and for matters incidental thereto.

1.40 p.m.

DEFINITE URGENT MATTER

Mr. Hedwige Bereaux *(La Brea)*: Mr. Speaker, in accordance with the provisions of Standing Order 12(1) and (2), I hereby ask leave to move the adjournment of the House at its sitting today, Friday, October 10, 1997, in order to discuss a definite matter of urgent public importance, to wit: the plight of the vast majority of persons in the La Brea constituency, and in particular, those residents in the villages of Point D'or, La Brea, Bassa Hill, Lowlands, Belle Vue, Sobo, Vessigny, Union and Vance River, who have not received a supply of pipe-borne water for the past six weeks.

The matter is definite because it refers to a specific and identifiable failure of the Government to ensure that the Water and Sewerage Authority for which the Ministry of Public Utilities is responsible, provides a basic life-sustaining commodity, water, to the citizens of the La Brea constituency.

The matter is urgent because water is a necessity of life. The lack of a supply of potable water, the failure and/or inability of the Water and Sewerage Authority to respond positively to the pleas of the residents and their duly elected representatives, for such a long time, means that there is no water for drinking,

cooking, washing, personal hygiene or for small industries and business activity, thereby causing untold hardship to the population.

The matter is of public importance because my constituents are required to pay water rates for a commodity which they are not receiving. This is contrary to the Constitution as it constitutes a denial of the individual right to property. Further, the inability to obtain supplies of water has caused my constituents to resort to springs, wells, rivers and canals to satisfy their needs. This will definitely herald an outbreak of gastroenteritis or other communicable diseases which shall have a dire effect on the health of the nation.

Mr. Speaker: Hon. Members, I am certainly not satisfied that this is a matter which could properly be discussed under this topic. For the assistance of Members, I simply indicate that the Speaker is available to advise and assist Members in appreciating what this particular item is designed for.

SPECIAL TASK FORCE
PRIMARY SCHOOLS TEXT-BOOKS

The Prime Minister (Hon. Basdeo Panday): Mr. Speaker, it is my duty to report to this honourable House on the initial findings and recommendations of the special task force which was assembled on my instructions last month to determine the nature, scope and causes of the extensive errors reported in primary school books approved by the Ministry of Education for the 1997/1998 academic year.

The special task force was asked to determine the culprits responsible for this outrage against the school population, against our school children and their parents, against the nation's educators and against our entire education system. The special task force was also mandated to submit recommendations which would ensure that the nation's students, their teachers, parents and guardians, would be protected from future abominations such as is the case with the approved text-books which parents had to buy for their children for the 1997/1998 school year.

A large number of those parents are very poor people and would have been forced to cut and contrive as best they could, and many parents and guardians would have suffered great financial strain in order to get the books which their children and the charges in their care need at this stage of their education. Because of the diligence of the special task force, we now know the dimensions of the problem we face in this matter and it is distressing. But we owe this task force a great debt. The members of the task force have been most conscientious and public tribute must be paid to all these public-spirited citizens. I salute them for the

commitment and thoroughness and for the courage with which they carried out the first phase of, what turned out to be, an assignment of greater magnitude and complexity than might have been envisaged initially.

The members of the special task force to whom this nation owes a debt of gratitude are: Mr. Clive Pantin, Chairman, who is well known nationally and internationally; Dr. Tim Gopeesingh, Vice-chairman, senior lecturer at the University of the West Indies, School of Medicine and former Deputy Dean; Sister Paul D'Ornellas, retired educator; Mr. Anthony Garcia, President of the Trinidad and Tobago Unified Teachers' Association; Dr. Stephan Gift, lecturer at the University of the West Indies; Mr. Zainool Khan, representative of the interreligious organization; Mr. Peter Pemberton, representative of the National Primary Schools Principals' Association; Sen. Prof. Kenneth Ramchand, also a very well-known person nationally and internationally; Mr. Glenville Taitt, representative of the Parent/Teachers' Association and Dr. Ewart Taylor, lecturer at the University of the West Indies.

Shocking as it may be to the entire country, as it is to me, the special task force has found 39 of the approved books to be so seriously flawed that the task force has called for them to be immediately withdrawn from the classrooms. Equally shocking, every one of the remaining approved books for the 1997/1998 school year contains errors. My cursory count shows over 4,400 errors in the text-books which were examined: 858 in the language arts books; 869 in the science books; 1,342 in the social sciences text-books and 1,348 in the mathematics books.

With this information now at hand, we know who are the real criminals involved in our education system and our education system must be exorcised of these charlatans. On this note, I take this opportunity to apologize unreservedly for the misunderstanding and the resultant unhappiness which our teaching population may have suffered when I remarked last year that those who would abandon the children in their charges were guilty of criminal conduct. Though I hold to the statement, I apologize for the unhappiness it may have caused.

There is nothing that can be ambiguous about my position now and there should be no doubt about my seriousness in this matter. No entity, no individual, no organization, guilty of perpetrating the atrocities that the task force has confirmed, should be allowed to go unscathed. So grave is the situation that the special task force recommends that Circular Memorandum No. 100, dated July 3, 1997, issued by the Ministry of Education, Subject: "Text-books for Use in Primary Schools", be rescinded with immediate effect.

1.50 p.m.

We can well imagine the present plight of the nation's children, their teachers, poor parents and guardians. Those who are culpable should have no hesitation in doing what the sorry situation demands of them. There must be no suggestion that parents and guardians would now have to look for money to replace the defective books delivered by the authors, printers, publishers and book sellers and other persons who are responsible. The task force has established that responsibility because this national disgrace extends beyond the commercial text-book trade and those outside of the trade who are culpable must also be called to account.

Mr. Speaker, with respect to the nature and scope of the findings of the task force, having done an analysis in accordance with its terms of reference, it has determined the following:

(i) All books on the 1997/1998 approved primary school booklist contain faults and errors in varying degrees.

(ii) There are a number of books not on the approved booklist which are currently used in schools. The task force has not yet been able to ascertain the extent to which non-approved text-books appear on the schools' booklists, but it is continuing its investigations.

(iii) There is considerable confusion in some quarters as to what constitutes the approved booklist. This is because after the approved booklist was published via Circular Memorandum 100 dated July 31, 1997, letters were issued by the Standing Text-book Committee indicating the acceptability of additional text-books.

(iv) There are instances of books existing in several different variations with differing titles and authors.

(v) There are text-books existing in two or three editions, with different publication years, on sale in the bookshops. There are two books with the same name. In one case, neither the date of publication nor the name of the author were given. In the other case of the book with the same title, four authors were named and a different publisher is listed.

(vi) There are wide differences in a number of instances between the text-books or manuscripts reviewed by the Standing Text-books Committee and the books actually on sale in the bookshops.

(vii) A decision was made to classify the errors in five main categories.

I might add here, Mr. Speaker, that this has been going on for a long time. *[Laughter and desk thumping]*

These categories are:

(a) Mistakes arising from unsatisfactory typing, printing, proof-reading and so forth are termed "printing errors" or "typos".

(b) Mistakes in punctuation, spelling, grammar, sentence construction, word order, word choice and so forth are termed "writing errors".

(c) Wrong, misleading or insufficient information which are likely to contradict other things the pupils have learnt, or to under-prepare them, are termed "factual errors".

(d) Errors indicating unsatisfactory control of material, bad teaching practices or lack of teaching skills, limited understanding or knowledge of text-book creation are termed "professional errors".

(e) Examples, illustrations, charts, tables, diagrams, formulae, equations and so forth that do not work; these faults need to be picked up for immediate corrections and are described by the task force as "rhetorical errors".

Mr. Speaker, some of these matters are still being investigated by the task force since a decision was taken to examine all text-books approved for use in the 1997/1998 academic year by the Ministry of Education. This special task force has examined all the books in circulation and has determined how many are faulty and has classified the faults in such a way as to establish a basis for attempting to rectify the present crisis.

Because of what the task force uncovered, a number of matters were referred to the Ministry of Legal Affairs since it appears that in certain instances there are *prima facie* bases for legal action. It would not be prudent for specifics of those matters to be made public in advance of such probable action but, all will be revealed in due course.

I give to this honourable House and to the nation's children, their parents, guardians and teachers, the assurance that in light of the findings and recommendations of the special task force, the most effective corrective measures will be taken as a matter of greatest urgency; and where there is adequate evidence that the law has been broken, appropriate action will be taken against the guilty parties. I would wish very prompt action in these matters. The task force has

confirmed that for a long time there has existed this chaotic state in the selection, evaluation and standards of ministry-approved school books.

In a chronology going back 25 years, between the years 1972 and June 26, 1995, we find that for a variety of reasons there were no fewer than 15 interventions triggered by the school-books selection process and the concern of standards in this area. In this context it is interesting to note that on February 3, 1995, the standing committee for the selection of text-books for schools, which had been established in 1992, was disbanded without notice and a new special committee on text-books for primary and secondary schools began to operate with a mandate "to put order into and minimize the chaos at the primary and junior secondary schools with respect to text-books."

That was in February, 1995.

The task force also found that on May 9, 1995, an intervention was triggered by strong intervention by the school principals over the fact that some of the books used by schools were not on the approved list and there was also growing concern over the issue of conflict of interest. In June 1995, there was another intervention, because of probable conflict of interest.

On June 26, 1995, the National Schools Principals' Association called for openness and transparency, the involvement of interest groups' expertise and the exercise of objectivity in the school-books selection process.

Unfortunately, in its inscrutable wisdom the government at that time chose to commit *hara-kiri* on November 6, 1995 *[Laugher]* before it could bring order to this chaotic situation. Against this background, the special task force identified a number of weaknesses in the functions and operations of the standing committee for the selection and standardization of text-books for primary and secondary schools which I shall refer to as the Schools Text-book Committee during the remainder of this communication.

2.00 p.m.

I cite, for example:

(a) The criteria methodology for selection of reviewers by the Text-book Committee were weak.

(b) The form identified as information sheet for potential reviewers was not used for evaluation of reviewer's ability, suitability, accountability and competence.

(c) The Schools' Text-book Committee accepted manuscripts for review, some in an unfinished form, distinct from a finished text-book. This was one of the major causes of the problem.

(d) The final selection of text-books by the Schools' Text-book Committee was done by only two members of the text-book committee for mathematics, three for science, four for social studies and four for language arts.

(e) The authority for final selection was left solely to these small subcommittees of the Schools' Text-book Committee for final acceptability.

(f) The identity of some reviewers was known to persons outside the Schools' Text-book Committee.

(g) The Text-book Committee did not specifically perform proof-reading as well, of manuscripts submitted. Publishers were told verbatim, to check out the mistakes and make changes. Only in a few cases were the corrected manuscripts resubmitted for acceptability.

(h) The Text-book Committee had written to publishers indicating that their text-books were acceptable even before the Minister had determined the final list. This created confusion and chaos in the system.

(i) The Schools' Text-book Committee submitted to the task force the names of seven text-books whose final production differed from the approved manuscripts. For what it is worth, the notorious *Primary School Mathematics Upper Level, Book 4*; the 1,000-error book was not on the approved list.

It is the view of the special task force that the problems which have surfaced would not have occurred had the School Text-book Committee fulfilled its own guidelines as indicated in the Standing Committee for Selection and Standardization's First Review Report (Supplemented) April, 1997.

Recommendations: To deal with the monstrous problems which have been identified, the task force recommends that the Circular Memorandum No. 100 dated July 3, 1997 issued by the Ministry of Education, Subject: "Text-books for use in Primary Schools" be rescinded with immediate effect. The task force also recommended that because of the high number of inaccuracies, the use of 39 books now in the schools be stopped immediately.

Another recommendation is that the errata sheets be supplied for insertion into the remaining books in use in primary schools, with the use of those books being restricted for a period of one year up to the end of 1997/1998 academic year. With specific reference to the recommended errata sheets, the task force advises that the continued use of the affected text-books in the schools should depend on the supply of approved errata sheets, produced and distributed by the relevant publishers not later than October 31, 1997.

Mr. Speaker, the special task force also uncovered a number of school books differing from manuscripts submitted to the Text-book Committee. In those cases, it is recommended that the books be withdrawn from use in schools with immediate effect while the task force continues its investigation to determine the extent to which such differences may further exist; the reasons for the occurrence and the person or persons responsible.

In the position which, like every other citizen, I fully endorse and which I have publicly articulated, the task force has urged that great care be taken to spare parents and guardians any additional cost, such as cost of replacing books already bought. I am in total accord with the view of the task force that in purchasing text-books parents and guardians would have had a legitimate expectation of the desirable quality and acceptability of books, and the appropriate reimbursement to parents consequently falls within the ambit of the publisher's responsibility.

The task force recommends that the Attorney General investigate the relevant legislation pertaining to the publication of text-books with a view to taking such action as may be deemed necessary. I concur with this advice, as I do with the call of the special task force for the suspension of the work of the incumbent standing committee for the selection and standardization of text-books for primary and secondary schools.

It may have been felt that given the wide publicity attached to this disgraceful situation with text-books, and given the manifest passion of the country to have the matter corrected, the task force would have received the fullest co-operation from the officers of the Ministry of Education, but that was not the case. The task force reports that full co-operation from the executive management of the Ministry of Education was at times seriously lacking, resulting in delays and frustration in the exercise. I assure you that did not happen overnight. In addition to the egregious injustice inflicted on the nation's children, parents, guardians and teachers in this matter, the issue of accountability comes sharply into focus. For

some people including, regrettably, certain Members on the other side of this honourable House—

Mr. Speaker: Let us have some order please. We need to hear what the hon. Member is saying, and also the *Hansard* Reporter.

Hon. B. Panday:—the concept of accountability is elastic and infinitely flexible. *[Interruption]* An expression of panic, "drowning men grasping at straws."

When one looks at the ethical acrobatics of the good doctor—who happens to be absent today—we see a man talking morality and ethics out of both sides of his mouth at the same time. In one breath, he attributes to a Minister of the Government of the Republic of Trinidad and Tobago full responsibility for everything that goes on in his Ministry. A heartbeat later, his position is that he should not be called to account for what went on in organizations in his portfolio during his tenure as a minister in the failed Manning administration.

In one breath the Member for Diego Martin West would hold my administration to unprecedented levels of transparency—I have no problem with that—but in the same breath, he and his cohorts tell us that the manner in which financial institutions funded by millions of dollars of taxpayers' money and fiduciaries for untold millions of depositors' funds, including state-owned agencies' funds, is nobody's business other than the directors and staff and that the operations and machinations, if such is the case of those institutions, should be utterly opaque. What utter rubbish!

2.10 p.m.

The rules of the game are different now. In less than two years in office this administration has ordered three formal inquiries into allegations of financial impropriety involving supporters of this Government. That is without precedence in the history of Trinidad and Tobago. I am tempted to call the bluffs of those who are calling for a full inquiry into the ADB affair. Let me caution those who are vocal at this time that there might be bases for ordering an omnibus investigation into the affairs of other state-owned fiduciaries, such as the National Commercial Bank, Workers' Bank, National Fisheries and other institutions including the Agricultural Development Bank. We will come back to that another time.

I now conclude by pledging my intention to see that our nation's children, parents and guardians are protected from the predatory practices of the unscrupulous network behind the school books fiasco. From now on, the teachers

and students will be supplied with books and other tools befitting those who hold in their hands, the future of a nation aspiring to be a total quality nation, a premium nation among the nations of the world.

I beg leave to table this communication.

Thank you. *[Cross talk]*

Mr. Speaker: Order! Order! Hon. Members, it is quite clear that the business of Parliament cannot be conducted with Members on both sides of the House carrying on conversations like this. I ask you to conform.

Mr. Valley: My humble apologies.

Mr. Speaker: Much obliged.

OCCUPATIONAL SAFETY AND HEALTH BILL (JOINT SELECT COMMITTEE)

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, in furtherance of the agreement by both Houses of Parliament that there should be established a joint select committee to consider and report on the Occupational Safety and Health Bill, 1997, I now beg to move that the following Members of the House of Representatives be nominated to serve with an equal number from the Senate, on the Joint Select Committee appointed to consider and report on the Bill respecting the safety, health and welfare of persons at work. They are:

Mr. Harry Partap

Dr. Hamza Rafeeq

Dr. Vincent Lasse

Mr. Hedwige Bereaux

Mr. Martin Joseph.

Question put and agreed to.

ARRANGEMENT OF BUSINESS

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that the House proceeds to deal with Bills Nos. 1, 2 and 3 under "Government Business" followed by Motion No. 2 under "Private Business".

Agreed to.

LIMITATION OF CERTAIN ACTIONS BILL
[SECOND DAY]

Order read for resuming adjourned debate on question [October 3, 1997]:

That the Bill be now read a second time.

Question again proposed.

Mr. Barendra Sinanan *(San Fernando West)*: Mr. Speaker, when the House last met we were debating a bill to make provisions for the limitation of time for bringing certain actions. In introducing that Bill the learned and hon. Attorney General had indicated that the legislation was progressive and suitable to a progressive society.

In 1980, a consolidated Act known as the Limitation Act was introduced in the United Kingdom. That was the culmination of changes and reforms introduced in the law of limitations in a series of statutes before the war, and in particular, the Limitation Act, 1963. It was designed to mitigate the injustice caused to a plaintiff who did not know he had suffered injury until the expiry of the current period of limitation, and thus had his claim barred without knowing he had a claim.

The Limitation Act 1980 of the United Kingdom embodies substantially the relevant provisions of the Limitation Acts of 1939 and 1975. The drafters of the proposed legislation before us have virtually copied certain sections of the Limitation Act, 1980 of the United Kingdom, omitted certain sections and modified other sections for obvious reasons. It is my opinion that the drafters have failed to consider properly, or at all, the impact the proposed legislation could have on our society; whether certain provisions of the proposed legislation are suited for the needs of our society and whether our society has in place the legal machinery to deal with the enforcement of some of the provisions.

Within the last few years our society has been pressured to produce justice expeditiously and less costly. We must ensure that whatever legislation is brought to Parliament does not put a financial burden on our citizens and must be easily interpreted and adjudicated upon. It must not cause a state of uncertainty in the minds of our citizens, and especially, the threat of possible litigation. The law of one society cannot be adopted wholesale in another society. In our jurisdiction we have had the instance of the famous case of *Pratt and Morgan* where the Privy Council had indicated that a convicted person’s appeal must be dealt with in two years. We have seen what that has done to our society. It cannot work in a society not yet as fully developed as ours.

2.20 p.m.

A proposed look, therefore, at the relevant legislation reveals omissions, ambiguities and, with respect to personal injuries, a threat of litigation at any time, without any overriding provision to end it on a fixed date. Perhaps it would have been wiser to amend the existing Limitation of Personal Action Ordinance, Chap. 5:6, to provide as necessary therein, instead of repealing the whole ordinance.

I now turn my attention to the interpretation clause of the Bill—definitions. In the explanatory note, it is indicated that the Bill is a general measure for the limitation of time for filing civil actions. In clause 2(1):

"'action' means any civil proceedings in a court of law;"

My understanding of "any civil proceedings" includes proceedings relating to real property. The Attorney General may wish to consider an amendment after the word "law" to say, "which expression does not include an action relating to real property".

We have in the definition of "personal estate and personal property" that it does not include chattels real. In this case, I had to go to the dictionary to find out what was "chattels real". The definition of "chattels real" are "interests which are annexed to or concern real estate". For example, a lease of land for years. As it stands now, anyone reading this legislation and the definition of "personal estate and personal property" would have difficulty in determining what is chattel real. Perhaps that expression needs to be defined.

Again, the question of disability should be defined. Clause 11(1) of the proposed legislation is equivalent to section 28 of the United Kingdom 1980 Limitation Act. It extends the period of limitation prescribed by the Act to four years from the date the person ceases to be under a disability, that is clause 11(1) of our Bill. Under Order No. 77 of the Rules of the Supreme Court, a person is under disability if he is an infant, a person of unsound mind or a subnormal person. Disability also has the meaning assigned to it by the Mental Health Act. It is therefore proposed, Mr. Speaker, that the word "disability" should be defined in the proposed legislation as having the meaning ascribed to it by the Mental Health Act or by Order No. 77 of the Rules of the Supreme Court.

Clause 3 of the proposed legislation, which is one of the material clauses, deals, *inter alia,* with the limitation period of specialty contracts—there are contracts under seal—actions relating to legacy or share of any inheritance, and

actions for account between partners in commerce. If I may read section 3 of the Limitation of Personal Actions Act, which is repealed by the proposed legislation, it states:

> "All actions, suits, or proceedings brought to recover any sum of money secured by any mortgage, judgment, or specialty, or charged upon or payable out of and being a lien upon any land or rent, or recovery of any dotal claims, or any legacy or share of any inheritance, and all actions of account between partners in land or commerce, or between co-heirs or against any executor, guardian, trustee, curator, administrator, or agent shall and may be brought at any time within a period of twelve years next after a present right to receive or have the same shall have accrued to some person capable of giving a discharge for or a release of the same, and not after twelve years, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto, or to maintain such action, shall have been given in writing, signed by the person liable or by whom the money shall be payable or his agent, to the person entitled thereto or his agent; and in such case no such action, suit, or proceeding shall be brought but within twelve years of such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one, was given."

Now, Mr. Speaker, this entire section, as indeed the entire Limitation of Personal Actions Act, has been repealed by the proposed legislation. No provision is made in the legislation before us for specialty contracts—those are contracts under seal—contracts relating to inheritances and so forth, which I have indicated the old section spells out.

Under the Limitation of Personal Actions Act, the time for bringing an action with respect to libel and slander is limited to two years. Under the proposed legislation, a four-year period is being proposed. The limitation period for this type of action, that is libel or slander, under the UK Ordinance is three years with a discretionary extension of the time limit. Section 32A of the UK Act states that any such action:

"(a) may be brought by him at any time before the expiration of one year from the earliest date on which he knew all the facts relevant to the cause of action; but

(b) shall not be so brought without the leave of the High Court."

In other words, in the legislation before us, you can only bring an action for libel or slander within the four-year period, whereas in the UK legislation you can do so from the earliest day when the person knew all the facts relevant to the cause of action, but with the leave of the High Court. So, the UK legislation contemplates a period outside the strict four-year period.

I am at a loss to understand why in certain clauses of the proposed legislation the drafters adopted parts of the UK legislation and in others they did not. Further, there is no provision in the law, as it now stands, for the estate of a deceased person to benefit from a cause of action in libel and slander, that is, it does not survive for the benefit of the estate. We have had the infamous case of Selwyn Richardson. I would have thought that this would have been the appropriate time and piece of legislation to amend that law to provide for the survival of an action.

Mr. Speaker, we also have a situation here where, in the old legislation, the limitation period of bringing an action with respect to rent was six years and is now four years. We have heard from the Attorney General that he proposes to bring legislation to deal with the Workmen's Compensation Act, so I will not belabour that point. I shall wait until the legislation comes before us.

Clause 3(2) of the proposed legislation is another clause that has caused me difficulty. The proposed legislation requires an action to be brought before the expiry of 12 years from the final judgment. The operative words here are "the final judgment". The Bill, therefore, should state clearly what is meant by "final judgment". What is to happen in the event of an appeal? Would the time between the date of filing the appeal and the date of determination be excluded from the 12-year period? It is very possible that between filing the action and determining the appeal, the 12-year period could be exceeded. Again, the proposed legislation in clause 3(2) says:

> "...no arrears of interest in respect of any judgment debt shall be recovered after the expiry of twelve years from the date of final judgment."

I am not sure what this means and perhaps the Attorney General in winding up the debate will expand. Does it really mean no arrears of interest or no outstanding interest? What is to happen in the event of an appeal?

2.30 p.m.

Mr. Speaker, clause 4(1) of the proposed legislation which deals with contribution between tortfeasors is adopted from section 10 of the United Kingdom legislation and 4(1) states *inter alia:*

> "... no action to recover such contribution shall be brought by the first tortfeasor after a period of two years from the date on which the first tortfeasor is held liable for the damages by a judgment given in civil proceedings..."

Again, Mr. Speaker, the question arises: What is to happen in the event of an appeal? This clause should be made clear. I am not sure whether in our jurisdiction the two-year limitation period is applicable to our society. I state an example which would probably elucidate the point. A tortfeasor is held liable in 1997, he appeals the decision, he also files an action to recover from a joint tortfeasor, the appeal is determined four years after and he succeeds. The action against the tortfeasor at this point is now otiose but he is liable for costs and he is also out of pocket because he has to meet his legal cost in filing the appeal. Again, clarity is required in this clause.

Mr. Speaker, I now turn to clause 5 of the proposed legislation which is taken from section 11 of the United Kingdom Act. In clause 9 of the proposed legislation, which is taken from section 33 of the United Kingdom Act, the court has power to override limitation periods. In other words, litigation must end at some point. For example, a person is involved in an accident in 1997 and no action is brought for four years, the person who caused the accident goes about building his life and fortune. Is it fair to him or his children to have an action brought against him in the year 2050? There must be a time limit in bringing these actions. If the proposed legislation is to remain as is, let the injured party or his legal personal representative obtain the leave of the court for bringing such proceedings as in the case of libel and slander in the United Kingdom Act. This would engage the attention of the Master of the Courts and free the trial judge from hearing and adjudicating on the issue regarding the date of knowledge as opposed to acquired knowledge. Mr. Speaker, I am asking the Attorney General to look at this clause to see whether a time limit needs to be put on the cause of action. There must be a cap.

In clause 5(3), reference to section 28 is perhaps a typographical error and it should really be section 27 of the Supreme Court of Judicature Act.

Clause 5(5) deals with the definition of "personal representative" and this again is largely adopted from section 11 of the United Kingdom Act. An essential part of the proposed legislation was not taken from the United Kingdom Act and I will read the definition of "personal representative" under the United Kingdom Act which says:

> "(6) For the purposes of this section 'personal representative' includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate) but not anyone appointed only as a special personal representative in relation to settled land..."

In our local scene, quite often an action is filed against a deceased person's estate, there is no probate although there is a will, and there are no letters of administration. It is therefore necessary in such circumstances for the court to appoint an administrator *ad litem* for purposes of bringing the action.

With the insertion of the omitted provision, that is the provision which is contained in section 11 of the United Kingdom Act, the definition of "personal representative" to include an executor is not provable. That section can benefit the society in Trinidad and Tobago, and I am suggesting that the hon. Attorney General look at that.

It is often very difficult for the court, the plaintiff, or an applicant to find someone who is prepared and willing to act as an administrator *ad litem.* That person, the applicant, must name a nominee to act, he must consent and state that he has no adverse interest in the proceedings. It is very difficult in a society such as ours to get someone who is prepared to undertake that burden.

I now turn my attention to clause 6(1) and this again is taken from section 12 of the United Kingdom Act. In this clause, at the end one will see the words, "for any other reason." I am not sure what the drafters had in mind and perhaps the Attorney General in winding up can elucidate.

Clause 7 of the proposed legislation is adopted largely from section 14 of the United Kingdom Act. Subclause (2) of clause 7 of the proposed legislation provides:

> "...an injury is significant if the person would reasonably have considered it sufficiently serious to justify his instituting proceedings against a defendant who did not dispute liability and was able to satisfy a judgment."

Mr. Speaker, what would be the position where a person disputes liability? Again, I await the response of the Attorney General.

Clause 14 of the proposed legislation is again adopted largely from section 32 of the United Kingdom Act. I am not sure whether subclause (4) of the proposed legislation is suitable to our society. It says:

"A purchaser is an innocent third party for the purposes of this section—

(a) ...and did not at the time of the purchase know or have reason to believe that the fraud or concealment had taken place;"

This clause also relates to personal property and with respect to this clause, there is no machinery or registry in place where a person can file a notice dealing with personal property as in the case of real estate where one can file a *lis pendens.* This clause extinguishes the principle of *meno dat qui non habet* which when interpreted means, "no one can give who does not possess." So this clause is taking away from our law a principle that has been in force from time immemorial.

Clause 12 deals with the approval of actions and the acknowledgement of part payment. Subclause (3) states:

"...a payment of a part of any interest that is due at any time shall not extend the period for claiming the remainder then due, and any payment of interest shall be treated as a payment in respect of the principal debt."

Clause 12(4) states:

"...a current period of limitation may be repeatedly extended under this section by further acknowledgements or payments, but a right of action, once barred by this Act, shall not be revived by any subsequent acknowledgement or payment."

Mr. Speaker, why is payment of interest being treated differently from payment of a principal debt? Why is the time not extended to recover interest if payment is made towards interest? What if parties make payment and reach an agreement for payment of the residue of the debt after the period of limitation has expired? Why should they be deprived of bringing proceedings, based on that agreement?

2.40 p.m.

Again, I would ask the Attorney General to look at this subclause carefully. Throughout the Bill there are ambiguous phrases and, as I stated before, the legislation ought to be clear and easily understood. We have had the experience of Legal Notice No. 33 of the Supreme Court of Judicature Amendment Rules, 1993. That rule provided that an action stood abated if no step was taken by the party instituting the proceedings, for a period of one year from the last step taken by him. The action stands dismissed if no step is taken within a period of two years. For example, the plaintiff files a writ together with a statement of claim in October of this year. Extension of time for filing the defence is granted by letters. Mr.

Speaker, an extension granted by letters is not a step in the proceedings. The defendant files his defence on September 29, 1998—that is one day before the year has expired—and the leave of the court then is necessary for the plaintiff to proceed, because he has not taken a step within the year.

Again, I do not think that this was the intention of the drafters. I know that this rule is, in fact, before the court. The point I am making is that legislation ought to be clear and not leave room for interpretation which, necessarily, would incur cost.

Clause 5(1) states:

> "...where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person."

What is meant by "any other person?" My understanding is, only a plaintiff can bring an action.

Clause 6(1) states:

> "...because of a time limit in this Act or in any other enactment or for any other reason."

What is meant by the words "or for any other reason?"

Clause 16 of the proposed legislation provides for set-off and counterclaim. It states:

> "any claim by way of set-off or counterclaim shall be deemed to be a separate action..."

Mr. Speaker, in law, a set-off is a defence and is treated as such. It is not a claim. In this regard, the drafters may wish to look at this particular clause again.

In closing, I crave your leave to bring two matters to your attention and that of hon. Members—although they are not directly related to the Bill—which, in fact, bear some general resemblance to the principle of the Bill before us. That deals with firstly, the time limit which a conveyancer would search a title to establish a good root. The period right now is 30 years, it was previously 40 years.

Another difficulty, in terms of time, is that relating to the payment of estate duty. Estate duty was abolished on January 01, 1981. The law, prior to 1981, was that anybody owning an interest in land had to pay estate duty. So while estate duty has been abolished for people owning interest in land after 1981, it is still in force for people who owned land and died prior to 1981. This is causing endless

worry, distress, delays to practitioners practising conveyancing. Again, I am bringing this to your attention in terms of the 20-year period for proving good title and the estate duty. It is the stated intention of the Government—Mr. Speaker, I must compliment you, at this point, for our lovely Members' Lounge—to have the entire Red House devoted to parliamentary business. It is my understanding that the Registrar General's Department which is situated downstairs of this building, is to be removed. I know of examples when the Companies Registry had to move from its previous location to its present location. Believe you me, when I tell you that moving workers from, perhaps the Ministry of Works and Transport or the Ministry of Legal Affairs, taking these books, putting them in boxes onto a truck and moving them to the new location; I know of cases where those companies' files have been left by the side of the road. That is a fact. It is proposed to move the Lands Registry from its present location to the Huggins Building, Independence Square. Again, I am asking the authorities to be careful in moving those books and setting them up properly. *[Interruption]*

Mrs. Persad-Bissessar: I thank the Member for giving way. I know we plan to move the Lands Registry, but this administration has not yet moved the Lands Registry which is proposed to be moved, so when the Member talks about books being left and so forth, could the Member tell us when he saw books being left?

Mr. B. Sinanan: Mr. Speaker, I am not going to get into the politics of that. I am making a point which can be taken by the other side or not. The point is, that has happened; whether it happened under the PNM, NAR or the UNC, to me, it is irrelevant. The fact of the matter is that it happened and it should not have happened.

With respect to the registry, the society, as you are aware, is enjoying the benefit of a boom; a boom, no doubt, created by the planning and work done by the last administration. As such, every contractor or businessman is going to the bank to borrow money so that he can operate his business. Searching a title at the registry downstairs is really horrendous. Insurance claims for practitioners have skyrocketed. Practitioners practising conveyancing, really, are at the mercy of their search clerks and the state of the registry.

Therefore, I am appealing to the Minister of Legal Affairs and the Attorney General and, indeed, the Government, to carefully consider reducing the time limit for searching titles. It, certainly, would do this country no good if, in the process of moving the registry, books are misplaced; books are not properly indexed and packed, causing commerce to slow down because one cannot certify a proper title.

So the momentum is there in the society and, I am sure, the Minister of Legal Affairs would accede or, certainly, give careful attention to my proposals and act upon them.

With these few words, I am hopeful that the Attorney General and, certainly, the Minister of Legal Affairs, would pay due attention and effect a speedy resolution to the last two points I have raised.

I thank you.

2.50 p.m.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, in responding, I do not know whether the Opposition supports this Bill or not. The hon. Member for San Fernando West stated here today that this Bill is not for our society and that we must not transplant matters from another jurisdiction which cannot be implemented. It was his view that this Bill would not be capable of being implemented in Trinidad and Tobago, but he seemed to be arguing against himself and his colleague, the hon. Member for Diego Martin East, because the hon. Member for Diego Martin East, at 4 p.m. on October 3, 1997 said in this House:

> "Mr. Speaker, before the Members on the opposite side get the wrong impression, let me state that I support this legislation."

Mr. Manning: Therefore, what is the difference?

Hon. R. L. Maharaj: Mr. Speaker, I am just making the point that they seem to never know among themselves whether they do or do not support it. *[Interruption]*

Mr. Speaker: Order, please!

Hon. R. L. Maharaj: Mr. Speaker, I know the Opposition supports this Bill. *[Laughter]* I know the Member for San Fernando West unconsciously made an error.

Mr. Sinanan: Let me correct my honourable friend, the learned Attorney General. I did not say at all in my contribution that I did not support the Bill. All I sought to do was to highlight certain areas of the Bill which needed clarification.

Hon. R. L. Maharaj: Mr. Speaker, I take it that what he said about *Pratt & Morgan* is not applicable again, so I would not bother to respond about *Pratt & Morgan*. May I say, however, that this whole question of limitation periods has occupied legal systems over a period of time, and governments have to make decisions as to what kind of limitation period they would have, and whether there

would be a flexible approach with the discretion given by the courts to determine whether periods of limitation for filing actions should be extended.

As a matter of fact, if one looks at the Halsbury Laws of England from which the Limitation Act of 1980 was taken, and one sees the discussion on this Act, one would see that it states that the policies which lie behind a statute of limitation since the earliest statute of 1623 have been variously described, and are founded on the public sentiment that litigation should be prevented after a certain period of time. Later on, it discusses the whole question of how judges tried to get around that Statute of Limitations. That accounted for, in 1939, Parliament in the United Kingdom coming with legislation to try to make the law as certain as it could be in respect of the limitation period.

That principle and policy continued in the legislation of 1980. Therefore, the policy in the 1939 Act of the United Kingdom, and the policy of the 1980 Act of the United Kingdom, whereby we are now trying to extend the periods of limitation for personal actions, and to give the court a discretion to extend that time, that policy has been adopted by several countries in the Commonwealth, and even in a country in the Caribbean. I merely wanted to show that it is not merely copying legislation. It is where legislation is studied, and to see whether it is relevant to a particular society.

Mr. Sinanan: Mr. Speaker, yes, I agree with him. The point I was making was that there should be a cap in terms of the time. It should not go on forever. There must come a point in time when a plaintiff would feel that the threat of litigation is not hanging over his head.

Hon. R. L. Maharaj: Mr. Speaker, that is exactly what I am saying. The legislation in England and the other countries gave a discretion to the court where there is an injustice, to extend the time to meet the justice of the situation. You see, it is all well and good to quote from a 1980 Act, but if the hon. Member for San Fernando West had read the discussion on the English legislation, he would see where it gave the court a discretion to extend the time, no cap, to meet the justice of the situation. Let me tell you what it says.

The equivalent section is 33 of the 1980 Act, and there is a comment here which I would like to read in relation to the Act so that one can understand about the alleged injustice or uncertainty the hon. Member for San Fernando West is talking about. Bear in mind that the section we are dealing with is clause 9 which gives to the court a discretion, after considering the matters advanced on both sides, to extend the limitation period so that injured parties can file actions. Some

of the considerations which the court would consider are the length of and the reasons for delay; the prejudice that can be caused to either party; the conduct of either party; and all the matters set out in clause 11. Those are the same matters mentioned in the English legislation.

Mr. Speaker, it states here:

> "This section which is derived...has spawned as much case law as any other...contentious statute, in the last five years. Comments have been made on the origin and inception of this section elsewhere...from which it will be clear that different courts have reached very different conclusions on the parliamentary intention in introducing the discretion to 'disapply' the time limits now contained...Parliament has now decided that uncertain justice is preferable to certain injustice or, in other words, that certainty can be bought at too high a price."

Let me try to explain. It used to be the law before this section and before it was made certain, as we are trying to make as certain as possible, that notwithstanding what the injustice is, if a person is injured and that person did not file his case within a period of one year as against the state, or four years as against a private individual, no matter what the injustice is, whether it was poverty, unavailability of getting records, a lawyer's negligence, whatever the reasons are, that person could not have commenced his proceedings. When he filed it, as long as the time passed; the other side could have it struck out.

The legislature obviously deciding that one must be creative and one must remove dehumanization and introduce rehumanization, decided that the courts must be given a discretion in order to determine, after weighing all the arguments for and against as to prejudice on the scale of justice, whether the plaintiff should be given the right to continue the action. That is the section which the British Parliament decided that it would not only, in 1939, pass, but it would continue it in 1980, notwithstanding the number of cases, it had to determine what the section meant, and in 1980 they tried as much as possible to make it as certain as possible so that the court would have that discretion.

3.00 p.m.

When Lord Justice Ormrod, in the case of *Firman vs. Ellis* [1978] 3 W.L.R. 18, reported that:

> "Parliament has now decided that uncertain justice is preferable to certain injustice or, in other words, that certainty can be bought at too high a price."

What he was saying is that, yes, there may be some uncertainty, there may be some injustice, but if one puts it on the scale of justice and weighs one uncertainty and one injustice against what one will be legislating against, the scale in favour of having the judicial discretion weighs very heavily in favour of giving that discretion to the court.

That is why, in 1981, when the PNM administration of the day decided that it had to amend these laws, it decided that it had to go that route, it had to decide whether it should put a cut-off date or it should allow the court to have a discretion. The PNM government of the time decided that it had to go that route because of the philosophy which Justice Ormrod was talking about: uncertain justice, if I may adopt his word, is preferable to certain injustice. So it is in that context that this discretion is given.

I know that when new things are being legislated there is always the fear that it may not work, but I think that it is unfortunate that it was not enforced since 1981. We would have known by now how well it would have worked, how much justice it would have resolved, but it is not only Trinidad and Tobago which has opted for that discretion of the court and the philosophy of this Bill. When one looks throughout the Commonwealth one would see that other countries have done so:

"**1. The Law in Victoria**

In 1949 the Victorian Law Revision Committee produced a report which recommended the adoption of the English 1939 reforms. This was implemented by the Limitation Act of 1955 which was amended in 1956 and 1958. These acts of 1955—1958 are clearly based on the English 1939 Act. The order of sections is almost identical and many sections re-produce the English provisions word for word."

The policy that we are talking about included part of the Victorian legislation.

"**2. The Law in Queensland**

Like Victoria, Queensland's Limitation Act of 1960 adopted the English 1939 reforms. As a result of the recommendations of the Queensland Law Reform Commission in 1972 the Limitation of Actions Act, 1974 was passed to consolidate the law and to adopt the provisions of the English Limitation Act of 1963 relating to personal injury. As with the Victorian Act, the order and text of the sections is almost identical to the English 1939 Act."

The policy decision giving the court that discretion is included in the Queensland legislation.

With regard to the law in Tasmania, that also is the same position. There was a report of the Tasmanian Law Reform Commission in 1973 and, as a result of that, the Limitation Act of 1974 was passed in Tasmania and amended. It also contains the same sort of policy.

In New Zealand the Limitation Act of 1950 was passed based on the 1939 Limitation Act of the United Kingdom. In 1969 the Ontario Law Reform Commission submitted a report and there were amendments which, in effect, followed the pattern and the policy of the Limitation Act of England.

Closer to home in a Caribbean country, in this respect it seems that St. Vincent and the Grenadines have done better than we have done. They have enacted legislation which follows closely and is almost identical in most provisions to the English Act. They have the same policy in which the court—I have the legislation here with me—gives the same discretion to which the hon. Member for San Fernando West is objecting and is talking about uncertainty and injustice. They have the same sections and I understand that it has worked quite well.

What this legislation has done is protect many poor people, many little people. When one looks at the studies in these cases and the statistics, one would see that many people who, before, were driven from the seat of justice now have access to the seat of justice. It is not unrestrained. There are safeguards under the Constitution of Trinidad and Tobago. The judiciary is the safeguard of the rights and freedoms of the individual and the organ of the state through which one expects to have protection. This law provides that there will be protection for all concerned with respect to litigation and that the judiciary would be able to decide. So that it is not quite correct to either say or give the impression that it is totally uncertain, that there will be no safeguards, people can suffer injustices and there must be a time-limit.

As a matter of fact, I do not know if the Member for San Fernando West recognized when he read the English legislation, it is a six-year period for the action in tort and contract. In other words, the period is more than four years. In England one has six years and then a further extension depending on the circumstances of the matter. Some countries that have followed it have gone for six years. I cannot remember now with respect to St. Vincent and the Grenadines, but some countries have gone for six years.

As a matter of fact, this question of limitation has become so important in the jurisprudence of the world that countries are extending it from six years to 10 and 12 years. The reason is that it is felt that if people are injured and, for whatever reasons, people have to take time to file cases and get litigation, there must be a greater time to give them that opportunity to have their cases filed.

In Discussion Paper No. 86 of 1992, issued by the Law Reform Commission of Western Australia on the subject "Limitation and Notice of Actions", I would like to read from page 24:

"(d) Other jurisdictions

2.38 Other legal systems, whether they are part of the common law legal family or belong to some other legal tradition, adopt a variety of solutions to the problem of limitation of actions. In most civil law systems there is a general period of limitation after the expiry of which all claims of whatever kind are barred. This contrasts with common law systems, where particular periods are generally laid down for different classes of case. Some of these limitation periods are quite long, for example 30 years in France, Germany, Belgium, Holland and South Africa, and 10 years in Italy and Switzerland. In many of these countries, however, shorter periods are laid down for particular classes of case. In Germany and South Africa, for example, the limitation period for most tort actions is three years; in Italy it is five years and in Switzerland it is one year.

2.39 A key problem in any legal system is the determination of the point at which the limitation period begins to run, and whether the period can commence without the plaintiff being aware of the existence of the cause of action. In most common law systems, the basic limitation period begins to run from the moment the cause of action accrues, irrespective of the plaintiff's knowledge, but there are various supplementary rules to deal with the problem of latent damage. Outside such systems, it is common for the law to provide two limitation periods: a shorter period which does not begin to run until the injured person knows of the injury and the identity of the wrongdoer, and a longer period running from the date on which the damage occurred, which acts as an ultimate bar."

So one has to look at the concept. Now, in Trinidad and Tobago we have had one-year actions against the state, four years with respect to actions against private individuals. This administration had to decide whether—it was not only a decision of the then Government, that law in 1981 came to the Parliament—the people

of Trinidad and Tobago in 1981 agreed that this was the policy for Trinidad and Tobago.

3.10 p.m.

Parliament under the Constitution of Trinidad and Tobago passed this law for the peace, order and good government of Trinidad and Tobago.

In 1981 the people agreed that this policy should be the policy for Trinidad and Tobago. But that policy and that law was frustrated, because the government did not get its act together, the executive arm of the state did not get its act together to carry out the wishes of the Parliament. So the executive can be regarded as holding the Parliament in contempt of the people's wishes. The fact of the matter is that after that, we have decided to introduce that same policy which was already agreed to by the Parliament—and with the greatest respect for the hon. Member for San Fernando West, I think that if he was going to say that this is not something that would work, and should not be implemented, he should come up with some facts to show that it cannot be implemented. I do not think it is sufficient for him to say this would not work, it has no time-frame. I think that he should come better than that, and if I may say so, there is no basis whatsoever for his statement that this matter should not be enforced, it cannot be enforced, it is not for our society, it would not be implemented and it cannot be implemented. I took a note of what the hon. Member said and that was what he said. If he wants to withdraw then I am prepared to sit for him to withdraw it but that is what he said.

Mr. Speaker, I will now deal with some of the other comments which he has made. I think that those are matters I could deal with at the committee stage because they have nothing to do with policy or any major matters. I have asked the officers from the Chief Parliamentary Counsel to check the matter with respect to the wrong numbering. We can deal with that at the committee stage. The point that he made about the final judgment, I must say, I could not understand it because final judgment means final judgment, and if it says 12 years from final judgment it shows you have 12 years from the time the matter was finally determined. One knows what is an interlocutory judgment and what is a final judgment, I do not think we have to define that but we can deal with that at the committee stage.

There is also the question about the joint tortfeasor. I think the clause is clear but we will still deal with it at the committee stage. It says from the date on which the first tortfeasor is held liable. It is not unusual that you have an action filed and because there is an appeal you stay the proceedings. If you go to leave it and wait

until an appeal is finished, then you might have to put it for 12 years because you have instances in Trinidad and Tobago where appeals take 12 years to be determined; I understand sometimes it takes 20 years. So one has to balance this thing and, therefore, put two years from the date that the person is held liable. If there is an appeal and the matter has to be stayed one can apply to the court because in some cases there are appeals which are frivolous and it will give the judiciary the opportunity of determining whether there should be a stay of proceedings on it. But we can discuss that at the committee stage.

With respect to his points on the time limits and matters of estate duty and so forth, obviously those are matters we will have to look at. I know there are reforms being proposed in respect of the land law and estate. I mentioned that in my opening on the last occasion. This is having to do with personal actions and this is what we want to deal with in this particular measure.

In respect of the point that he raised, and I am glad to know that he is so interested in the question of libel actions and for claims to be maintained by the estate of a person who has a libel cause of action. I understand that the other side opposed the Green Paper on Media Reform and that is one of the matters which is proposed in that paper. As a matter of fact, it has many other measures. So that, Mr. Speaker, at least I can get a concession then that the Opposition supports part of the green paper.

The point has been raised by the hon. Member for Diego Martin East about disability. He did say disability was not defined and I think out of an abundance of caution, in the context in which the Bill was drafted, disability was not defined but I have taken that point and there is a definition of disability which I would circulate. But may I say that what it meant was a person who was an infant or suffering from a mental disorder. It has to do with infancy and unsound mind. That is the disability that is being referred to. It has nothing to do with respect to the physical injury disability. So, if you picture the Bill, you have the period of limitation, you have the question where even if you do not have any notice and you get the notice you can file and then you have the question of the discretion of the court. There is a special section dealing with disability so that would be dealt with in an amendment which would be circulated. I give the assurance that this is a point which the Government considers to be well made and we will respond to it.

The hon. Member for Diego Martin East is not here but when he made his contribution on the last occasion he said that this Bill would provide tremendous flexibility to put more money in the pockets of lawyers. He also said that whereas

in the past there was a limitation period of one year during which persons could seek action against the state for negligence, now there are a number of possibilities: it can be two, four, twelve or twenty-four years in the case of a person with a disability. Mr. Speaker, I do not know what that means but if it means that as far as the Member is concerned if poor people get justice at the expense of some lawyers making money and, therefore, injustice should continue because the lawyers are going to make money, well I do not think that is a good reason to leave a law unreformed.

Under the legal system in which we operate, whether we like it or not and until that is changed, when one goes to court it is an adversarial system of justice. There is now a move to have some mediation so that you can have a more conciliatory approach in some kind of direction. But under the system which we operate if a person feels that he is wronged and the other side believes that person is not wronged and the plaintiff does not have any basis for a claim, the person goes to court and when the person goes to court you have either a judge or magistrate. The person, either by himself or through a lawyer, will have to make representation and the court, after listening to the cross-examination, the submissions and everything else, will give its judgment. So poor people who have to fight insurance companies to get their claims, who have to file claims against insurance companies, have to get lawyers to help them and if the lawyers work and they get money for it but the people get justice out of it I do not see anything wrong with that. So I really do not understand, unless the hon. Member for Diego Martin East was saying let us abolish lawyers. If he says so, there might be more money in banks probably.

3.20 p.m.

The other point that the Member for Diego Martin East made was with respect to clause 9 where it gives the court the power to override limitation provisions and gives the court jurisdiction to determine that there may be special circumstances. The Member was against that and I think that we have answered that. He also raised the question about the libel action. I think I have answered that. That is coming, and I am happy to know that we can get the support of the Opposition in certain aspects of the Green Paper on Media Reform.

The other point which was raised has to do with the question of workmen's compensation. I must confess that this is a point well made and it is a matter which would have attracted the attention of lawyers in practice for some time. I know the hon. Member for La Brea would have known of this when he was in another

capacity when, as a lawyer, in dealing with workmen's compensation matters on behalf of a company, he had to use this law against workmen.

Hon. Member: He never used it against them.

Hon. R. L. Maharaj: I do not know whether it was ever used, but I know it was a law which lawyers who were retained by the company could have used against workers. Obviously, I do not know whether the procedure at that company was that the instructions were given as to what lawyers could and could not argue. But I know that the hon. Member for La Brea would have been aware of this injustice. It is true that workmen do suffer this injustice. It is in that context that there is a proposal, really, to repeal the Workmen's Compensation Act and introduce a new Act, the Industrial Injury and Disability Compensation Act, which would be very comprehensive legislation dealing with the rights of people at work places and for their compensation, disability, and so forth, and get rid of these archaic limitation periods. As a matter of fact, when the new session of Parliament begins, this bill would be before us.

Apart from the points that the hon. Member mentioned, that there was a six-month limitation period for a claim for compensation to be made, he also spoke about the statutory period of one year where one had a claim and one had one year to file action under the common law. We are aware of that and it has been redressed in the Bill. That limitation period is going to be removed. So in a short space of time there would be relief in that area also.

When one, therefore, looks at these measures, one sees that they try to remedy a defect in the parliamentary system, in which the Parliament of Trinidad and Tobago agreed in 1981 to extend the period of time as contained in this Bill and where the Parliament approved these measures to be made law, but because that Act was not proclaimed and because of the problems in proclaiming it over the years, we have decided to take part of that law and put it in a bill, with some modifications and to ensure that it reflects the existing policy of what the people would want. So we decided to bring this Bill to Parliament. I do not think that we would have any difficulty with the Bill itself. It is a matter in which justice for people has been postponed for too long. I think it is a bill which is long needed.

I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clause 1 ordered to stand part of the bill.

Clause 2.

Question proposed, That clause 2 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I have an amendment to clause 2 which reads as follows:

Insert the following subsections:

" (3) For the purposes of this Act, a person shall be treated as under a disability while he is—

(a) an infant;

(b) suffering from a mental disorder;

(c) receiving treatment as an inpatient in any mental hospital within the meaning of the Mental Health Act, without being liable to be detained in the said hospital; or

(d) mentally ill within the meaning of the said Mental Health Act.

(4) In furtherance of subsection (3), the 'treatment' must be such that follows without any interval, a period during which the person was liable to be detained in the mental hospital in accordance with that Act."

Mr. Sinanan: Mr. Chairman, I propose an amendment to clause 2 which reads as follows:

"'action' means any civil proceedings in a court of law other than those relating to real property."

A civil proceeding does, in fact, include action dealing with real property.

Again, I am not sure whether the Attorney General would entertain my suggestion for a definition of "chattel".

Mr. Maharaj: I understand that says what it says. All lawyers and judges would understand that.

Mr. Sinanan: I made the point in terms of the understanding for the ordinary laymen. I know lawyers and judges would understand it, but in terms of other than lawyers and judges reading it—

Mr. Maharaj: Except that this would be interpreted by judges. I understand that where it is known and the legal principle is there, you do not define it.

Question put and agreed to.

Clause 2, as amended, ordered to stand part of the Bill.

3.30 p.m.

Clauses 3 and 4 ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Mr. Sinanan: Mr. Chairman, could the Attorney General expand on the last line in clause 5(1) which says "or any other person"? Could he explain in what context "or any other person" comes in?

Mr. Maharaj: Mr. Chairman, in general cases such as on behalf of a minor, a dead person or so forth.

Mr. Sinanan: The plaintiff is the plaintiff.

Mr. Maharaj: No, injuries to the plaintiff or any other person. The plaintiff may not be injured, but he could probably be claiming on behalf of some other person.

Mr. Sinanan: Well, then he is the plaintiff. If he is claiming on behalf of any other person, whoever is bringing the action is the plaintiff. Perhaps you can consider deleting that. If that is what is meant, you should consider deleting it because the plaintiff is, in fact, the plaintiff, whether he is bringing the action on his own behalf or on behalf of anybody else.

Mr. Maharaj: Mr. Chairman, could we go ahead and I would consider this in the meantime?

Mr. Chairman: Yes.

Clause 5 deferred.

Clause 6.

Question proposed, That clause 6 stand part of the Bill.

Mr. Sinanan: Mr. Chairman, again, in clause 6(1) "or for any other reason", I am not sure what is meant here?

Mr. Maharaj: Mr. Chairman, it says:

> "An action under the Compensation for Injuries Act shall not be brought if the death occurred when the injured person could no longer maintain an action and recover damages in respect of the injury, because of a time limit in this Act or in any other enactment or for any other reason."

There may be other reasons.

Mr. Sinanan: Okay.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

Clauses 7 to 15 ordered to stand part of the Bill.

Clause 16.

Question proposed, That clause 16 stand part of the Bill.

Mr. Sinanan: Mr. Chairman, I raised the point in my contribution of a "set-off" not being a defence. I do not know if the Attorney General would care to consider that.

Mr. Maharaj: Mr. Chairman, can the Member explain what he is saying?

Mr. Sinanan: Clause 16 says:

> "For the purposes of this Act, any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded."

I am saying that "set-off" is not a claim.

Mr. Maharaj: Yes, it is not a claim, but for the computation of time and in order to ensure—*[Interruption]* It says:

"For the purposes of this Act..."

that is the Limitation Act, the limitation period:

> "...any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded."

So it is for the purposes of this Act—for the limitation period—it is deemed to be that.

Question put and agreed to.

Clause 16 ordered to stand part of the Bill.

Clauses 17 to 22 ordered to stand part of the Bill.

Schedule I.

Question proposed, that Schedule I stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that Schedule I be amended as follows:

In the reference to the Arbitration Act, delete all the words commencing with the word 'section' in line 1 and ending with the word 'in' in line 4.

Question put and agreed to.

Schedule I, as amended, ordered to stand part of the Bill.

Schedule II

Question proposed, that Schedule II stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that Schedule II be amended as follows:

Delete the entire reference to the State Suits Limitation Ordinance, Ch. 5 No. 2.

Question put and agreed to.

Schedule II, as amended, ordered to stand part of the Bill.

Clause 5 recommitted.

Mr. Maharaj: Mr. Chairman, I cannot understand why the hon. Member is raising concerns about this. If there were injuries to the plaintiff or any other person and the plaintiff is filing the action, it must apply.

Mr. Sinanan: If he is bringing action on behalf of anybody else, he is still the plaintiff.

Mr. Maharaj: But in respect of injuries to the plaintiff or any other person, and the plaintiff may be filing the action of the injured person.

Mr. Chairman, I really cannot entertain the submission of the Member to delete "or any other person". I regret it very much, but I cannot do that—and I got technical advice, if I may say so.

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Question put and agreed to, That the Bill, as amended, be reported to the House.

House resumed.

Bill reported, with amendment; read the third time and passed.

3.40 p.m.

VENTURE CAPITAL (AMDT.) BILL

Order for second reading read.

The Minister of Public Utilities and Acting Minister of Finance (Hon. Ganga Singh): Mr. Speaker, I beg to move,

That a Bill to amend the Venture Capital Act, 1994.

You will recall that the Venture Capital Act, 1994 was proclaimed and brought into effect by Presidential Order in June 1996. That Act essentially makes provision for the establishment, regulation and administration of the venture capital industry.

The Venture Capital Act, 1994 was introduced by the hon. Member for Diego Martin Central when he was on this side. It was a strategic initiative designed to create an enabling and facilitative environment so as to increase the supply of equity capital to small and medium-size businesses in sectors targeted to diversify the economy and to increase exports. The amendments introduced to this honourable House this afternoon enhance that enabling and facilitative environment.

Subsequent to the launching of the Venture Capital Incentive Programme in October 1996, extensive consultations were held with various institutions and professional bodies who have expressed an interest in the goals of the programme. Arising out of these widespread consultations several recommendations were made to amend the Venture Capital Act in order to more accurately describe the objectives of the Venture Capital Incentive Programme, as well as the functions of the administrator.

Among other things, it was considered necessary to establish an entity to be called the Venture Capital Incentive Programme to satisfy the financial and managerial needs of the niche markets, segments of small and medium-size businesses to ensure that the programme's objectives of encouraging the flow of

resources into the small and export-oriented business sectors are successfully achieved. This progrmame provides an alternative investment vehicle for investors to make long-term equity investments while enjoying higher than average returns with a very attractive tax credit incentive. In this competitive global environment small and medium-size businesses are in critical need of accessing the right type of capital and managerial know-how to survive in this era of reducing trade barriers and formation of trade blocs.

Mr. Speaker, the programme's goals are to increase the level of employment and to stimulate the creation and expansion of new value added businesses in the non-traditional sectors of the economy. Higher business activity leads to increased employment and sustained wealth. Additionally, the programme allows the various stakeholders to participate directly in Trinidad and Tobago's economic development. The tax credit incentive is a powerful mechanism for changing the investor's mindset against risk financing, bringing capital to a sector that is traditionally at a higher risk. The programme's structure also creates a direct link between a fiscal incentive for saving and investment into the productive sectors of the economy. All capital raised must be invested for at least five years in the participating small and medium-size businesses, via equity. Investors receive tax credits and potentially higher returns on their investments whereas investees receive patient capital and hands-on managerial expertise.

This Bill seeks to make the role of the Venture Capital Incentive Programme more transparent and to render some of the provisions of the principal Act less onerous. The Bill provides for the following:

In clause 3 of the Bill the words "The Venture Capital Industry" have been deleted from the long title and replaced by the words, "the Venture Capital Companies registered under this Act." This amendment seeks to eliminate the misunderstanding that the Act was intended to regulate the entire venture capital industry, as opposed to its true intention of administering and regulating those venture capital companies that wish to avail themselves of tax credits under the Venture Capital Incentive Programme.

In clause 4 of the Bill, it is also proposed that all references in the Act to the words "Administrator of Venture Capital Companies" should be changed to read: "Administrator of the Venture Capital Incentive Programme". The proposed definition of the expression, Venture Capital Incentive Programme, explains the function of the Venture Capital Incentive Programme which is to administer the tax credit granted to investors in venture capital companies and to supervise the

establishment, regulation and administration of venture capital companies and qualifying investee companies under this Act.

In clause 5, a new section 2A is to be inserted establishing the Venture Capital Incentive Programme as a Body Corporate. This is to facilitate the effective administration of the programme. Autonomy is critical to the fast-paced nature of the venture capital industry and as a body corporate, the Venture Capital Incentive Programme will be allowed the flexibility to manoeuvre quickly and decisively in the present economic environment.

In clause 7 of the Bill it is proposed that a new section 3A, be inserted to provide for the secondment of officers from the public service. This would allow the Venture Capital Incentive Programme the ability to secure the services of suitably trained officers from the public service on a temporary basis.

Mr. Speaker, I also propose to make some adjustments to the new section 3A. The first adjustment relates to the period of secondment which is stated at subsection 3 of this section, to be five years. After considering the fact that during the period of secondment, an officer on secondment is deemed to remain on the establishment of his ministry or department and is also eligible for promotion *in absentia,* I am of the view that five years is much too long to keep a post tied up.

Another officer who would have remained in the ministry and is himself eligible for promotion due to his excellent performance in the very post that the seconded officer left, may become demoralized because upward mobility is not possible due to the secondment of the other officer for a period of five years. Due to the temporary nature of a secondment, I think two years is a more reasonable period for secondment. During the two-year period the seconded officer would have more than enough time to decide whether he wants to remain on the establishment of his ministry or department, or join the new department or organization to which he has been seconded.

Mr. Speaker, the other area of concern relates to subsection (7) of the proposed section 3A. This subsection makes provision for the automatic secondment of an officer who, being the holder of a substantive office in the public service, has been assigned for duty with the Venture Capital Incentive Programme. Subsection (7) seems to be in direct conflict with subsection 1 of 3A which requires the approval of the Public Service Commission and the consent of the Minister in cases where an officer in the public service is to be seconded to the service of the Venture Capital Incentive Programme.

My understanding of a secondment is that it is really in the nature of a transfer albeit, a temporary transfer of an officer from the service of one ministry or department to the service of another department or organization.

Under our Constitution, matters involving the transfer of public officers vest in the Public Service Commission. Not wanting to run afoul of the Constitution, I would feel more comfortable if the secondment or temporary transfer of a public officer falls under the authority of the commission. For this reason, I will be proposing at the appropriate time to delete the offending provision, that is, subsection (7) of section 3A. A new section 3A is being proposed which would provide for the annual allocation of funds approved by Parliament. These funds will enable the Venture Capital Incentive Programme to readily fulfil its functions and operate autonomously.

3.50 p.m.

The programme must also account annually to Parliament for the money allocated to it by Parliament in meeting its obligations and discharging its functions under the Act. Proper books and records must be kept by the administrator and the accounts of the programme are to be audited annually by the Auditor General.

The administrator is also required to submit a financial statement of the financial affairs of the programme for that year to the minister, no later than three months after the close of the financial year of the programme. Furthermore, the administrator must also submit a statement of accounts of the programme together with the Auditor General's report to the minister whose responsibility it is to lay those documents in Parliament for consideration.

It is also proposed that section 11(1) of the Act be repealed so as to render the provisions of the Act less onerous. This is evident from the new clause 11(1) which would provide for the venture capital companies to have at least $500,000 in paid-up equity capital within 12 months from the date of its registration. This new provision replaces the requirement that venture capital companies have and maintain $500,000 within the first 12 months of registration, and also have and maintain at least $1 million in paid-up equity capital by the end of the third year after the date of their registration.

By this proposed amendment venture capital companies would be able to draw down on their capital if necessary within the first 12 months from their date of registration. This is less rigid than the repealed section 11(1)(a), where the sum of

$500,000 had to be maintained throughout the period. This amendment is also intended to facilitate the formation of smaller venture capital companies with a capital base of $500,000. The repeal of section 11(1)(b) of the Act would enable and encourage those venture capital companies with a minimum paid-up equity capital of at least $500,000 to continue in business with the same minimum equity capital at the end of the third year of their registration under the Act.

As a consequential amendment, we are also seeking to amend section 48k of the Income Tax Act by deleting the former definition of "administrator" and substituting it with the definition at section 2 of the Act of 1994 as amended. As noted earlier in my presentation, the reference will now be to the administrator or the Venture Capital Incentive Programme. Amendment to the word "individual" in the Income Tax Act is also being proposed, so the word "person" will now be substituted.

The effect of this amendment is intended to extend the carry forward provision for tax credits not merely to individuals but also to companies. The definition of the word "person" for purposes of the Income Tax Act would now include an individual as well as a corporation. The Venture Capital Incentive Programme allows various stakeholders to participate directly in the economic development of this country. Over the last year the programme has been fine tuning its administrative mechanisms which are designed to meet the challenges ahead.

Since the opening of our offices of the programme there has been a steady stream of persons seeking venture capital for their businesses or commercialization of their ideas which have been developed. Currently, there are two registered venture capital companies in Trinidad and Tobago and a more proactive approach is adopted by the programme in bringing together entrepreneurs and venture capital companies. Public information and outreach projects are being targeted to identify those persons and institutions who can derive immediate benefits from participating in venture capital incentive programmes.

Emerging industries such as carnival, eco-tourism, agri-business, entertainment, yachting industries and technology industries in which this country has a distinct comparative advantage will be targeted. The opening of this programme is a bold initiative undertaken by the Government. I have no hesitation in commending this Bill to the House.

I beg to move.

Question proposed.

Mr. Martin Joseph *(St. Ann's East)*: Mr. Speaker, I rise to participate in this debate on the Venture Capital (Amdt.) Bill. From the outset, I indicate to the honourable House that we on this side support this piece of legislation. I think it is absolutely necessary for the records of this Parliament that we recall when this piece of legislation was introduced in this House on October 24, 1994. At the time the Member for St. Ann's East and the then Minister of Finance, in piloting this piece of legislation had indicated that it represented a part of the government's overall economic policy to ensure that not only did they diversify the economy, but also ensure that measures were put in place to make Trinidad and Tobago a competitive market, in light of the globalization which was then taking place.

It is interesting to note the comments of some of the Members on the other side who then occupied this side when this legislation was being debated, and specifically, the then shadow Minister of Finance, the hon. Member for Oropouche, Mr. Trevor Sudama. At the time questions were raised as to the value of the introduction of a piece of legislation like this in the country. The Member for Oropouche took pains to discredit the viability and usefulness of this piece of legislation. He said that it had no place in this country's economy.

I quote from *Hansard*:

> "If we want to transform the economy as we are all committed to doing—on the other side merely by word of mouth, but on this side by our commitment to the relevant policies to transform the economy of Trinidad and Tobago—then the pattern of that investment in both the public and the private sectors is critical. They cannot just talk about investment in the private sector without having the required infrastructure in the public sector to encourage private sector investment to take place and give it its head. When we consider what the Government has done with the infrastructure to encourage growth in the public sector, we will find that the policies have been grossly inadequate and not at all relevant to the needs and requirements of the Trinidad and Tobago economy, particularly in the last few years.
>
> What we do not have as Government's policy is an overall investment strategy—a framework which seeks to influence investment in certain critical areas of the economy..."

He went on, and I quote:

> "On what basis have they come to the conclusion that that would be a viable opportunity in Trinidad and Tobago? Do we have the infrastructure to enable the Venture Capital Bill and what is undertaken in that Bill to be successful?"

I am asking the hon. Member for Oropouche, the Minister of Finance and the Member for Caroni East, is the infrastructure to enable what is undertaken in that Bill now in place?

4.00 p.m.

The hon. Member went on to raise questions specifically about the role of the administrator. Interestingly enough, we see that the Member for Caroni East, in piloting the legislation, talked about the need to ensure that the responsibility of the administrator is now properly defined. At the time, however, the Member for Oropouche raised this, and I quote:

> "'(1) The President shall appoint a fit and proper person to be the Administrator of venture capital companies upon such terms and conditions to be fixed by the President.'
>
> The President means the Cabinet, Madam Speaker, so the Cabinet appoints an Administrator of venture capital...The question we have to ask is: To whom is this Administrator accountable? Is he a law unto himself having been appointed by the President, that is, by the Cabinet? Does he operate on his own?"

The same question is being asked with respect to the role of the administrator in this particular piece of legislation. Those points aside, I would like to focus on another aspect of this legislation, which treats with the macro-economics in which the legislation is being anchored. What do I mean by that?

We are in full agreement with the need for mechanisms to be put in place to ensure that Trinidad and Tobago continues to remain a competitive economy, given globalization and given the need for us to attract investment of all kinds. Of course, we understand that the whole purpose of venture capital is to allow persons who are willing, to invest moneys in areas for which the risk of the success of the enterprise might be a little more uncertain, as compared to other normal areas in which people put capital. That is the basis for the legislation, and we need to have that because venture capital as a means of getting investment capital is an established mechanism around the world.

I recall when the legislation was being discussed—and we talked heavily about the Canadian model—the Member for Oropouche was at pains to determine the extent to which the model, which was patterned on the Canadian model, had any viability in our Trinidad and Tobago economy. Again, I would like the Minister of Finance, when he is winding up, to address some of those same questions.

The concern is the extent to which the macro-economic policies of the Government are such that, at the end of the day, this very legislation may be able to attract persons who are willing to put money in their venture capital company so that it can feed into some of these small businesses and businesses in the export sector, which are being targeted. I am raising that because if the macro-economic circumstances are not healthy and attractive, then the micro-economic—and to me the Venture Capital Bill is a micro intervention—will not work.

We have to deal with both the micro and macro. The Inter-American Development Bank, in its report dated 1997, which deals with economic and social development into the 21st century, contain sections which deal with the question of economic development in Latin America and the Caribbean. It raises some interesting concerns about the future of economic development in Latin America and the Caribbean. It states that this depends to a large extent on the role of governments as it relates to the macro-economic policy development and initiative.

We are aware that there is an on-going debate with respect to the balance between the government and private sector in terms of economic development: what is the role of the state and how involved ought it to be in terms of that development; what areas of the economy it ought to be involved in and what areas it ought not to be involved in with respect to the whole question of privatization; and which arm is in the best position to be able to do certain things?

In addressing the concern, they have identified an area referred to as national policies, which should dovetail with market expectations. It states that since decisions are made by markets and companies, public policies that contradict the expectations of private operators generate negative reactions that abort the objective pursued.

Let me say what I mean by that because I think it is important. It is important because this Venture Capital Bill represents a relationship between the state and the private sector. The state provides certain tax incentives so that the private sector moneys can get into certain areas. However, we have seen a situation that currently exists, where the state is involved in a particular area of activity in the economy, in a relationship with private sector investors, albeit of a different kind. At the same time the state's behaviour is such that it raises doubts in the minds of the private sector investors as to what to expect in terms of the relationship between itself and the state.

Mr. Speaker, we are talking about the current issue which involves the Agricultural Development Bank, on which there are questions as to what the state

can do and how it can do it as it relates to the private sector. We are, in clause 5 of this Venture Capital Bill, talking about setting up a venture capital programme, which is established as a body corporate. The Minister in piloting the Bill said that the purpose of this, is to enable this body to respond quickly to changes that are taking place in the environment so that it can be flexible. The question is: What can one expect of this particular entity at some later stage with respect to what we are currently seeing now with respect to the Agricultural Development Bank? And what is the role of the state as it relates to the private sector?

4.10 p.m.

Dr. Job: On a point of clarification. Did I hear the Member say that the macro economic policy must guide the micro economics and then subsequently say that policy must conform to the desires and ambitions of the private investors? Could he clarify those two statements?

Mr. M. Joseph: Mr. Speaker, I hope as I go on the Member will be able to understand. The point I was making, is that we are in an era where the question about the state and private sector interaction is becoming more acceptable and encouraged and even as that is being encouraged, I believe that we, in this part of the world, need to understand how our state enterprises operate in those new and changing circumstances. As a result, it requires a new level of sophistication, if I may say so, in terms of how we deal, and how we treat relationships between state enterprises or semi-state enterprises and private sector organizations.

If private sector investors feel confident that the relationship which they will enter with the state at some later point in time can be so violated—for want of a better word—then there will be doubts with respect to how effective the relationship between state and private sector is in the future. I am saying that is an important mechanism for growth and development because we are recognizing that that type of relationship is being fostered and encouraged.

Mr. Speaker, the Member for Caroni East, Acting Minister of Finance, in piloting this piece of legislation indicated that the purpose of the Venture Capital Bill is to encourage investment and investors from any part of the world. There is a requirement on the part of the state, therefore, to be more sophisticated in terms of how it behaves and as a result the kind of actions that might have been appropriate in the past, are no longer appropriate in today's environment. I wish to suggest—*[Interruption]* Mr. Speaker, the Member for St. Joseph is continuing to make a point that is most unfortunate. The impression is being given that previous PNM

administrations were corrupt to the core and, as a result, that justifies any corruption that is currently taking place. Nothing could be further from the truth, and I think it is most unfortunate for all of us who are citizens of Trinidad and Tobago because the impression is being given by persons who ought to know better, that for 35 years, the PNM administrations were corrupt, they mismanaged, they stole so that it justifies today to do whatever. That is wrong and it ought to be corrected. *[Crosstalk]*

I never said that. I said that there are persons who gave the impression.

Mr. Speaker: I am sure hon. Members, that you know that this is no way to conduct a debate, and Members on the Government Benches do have a responsibility to help to keep the level up.

Mr. M. Joseph: Thank you, Mr. Speaker. I was making the point that we have a responsibility as legislators to make sure that whatever we do, it is done to the best of our ability and when we come here, it is to represent the citizens of Trinidad and Tobago. No matter the cut-and-thrust of politics, when we come to debate the business of the people and to debate bills, there needs to be a certain amount of level-headedness, national consciousness, pride and concern with respect to what we do here. I am saying to Members of this honourable House that we do ourselves and the country no good when we continue to perpetuate falsehoods for what is politically expedient. We are all in trade-offs, it is good for the short term and we may score points and figure we are better off, but for the long-term viability and well-being of this country, we are going to be no better off.

Mr. Speaker, we are competing with countries and we keep talking about highly competitive global environment in which we operate. We say it, but we do not seem to understand it, because if we did, we would not encourage the behaviour which we encourage. For example, we talk about globalization, and I will link the globalization issue to the other point which I was making. There is a fiasco which is currently taking place in the country right now and we are scoring political points, but what we do not understand is that by the end of the day that entire issue is on the Internet.

Hon. Member: No problem.

Mr. M. Joseph: No problem? As a result, the same investors we are talking about attracting are looking at us to see how we are behaving.

Mr. Speaker: Member for La Brea, this is really about the eighth time for the Sitting that I have seen you displaying that newspaper which I could read from here, with an offensive headline about a Member of the House. It is no use telling me that you are reading the newspaper because if you are reading in the Chamber, it is not really the right thing to do. It is offensive in the extreme for you to be doing what you are doing. Please do not repeat it.

Mr. M. Joseph: I was making the point that we have to ensure that the dovetailing of our micro and macro policies is such that at the end of the day we can realize the objectives for which the piece of legislation is intended. As I said earlier on, we on this side support the legislation because we are going to support any legislation that at the end of the day is going to be in the best interest of the citizens of Trinidad and Tobago.

There is something else which is developing, and as this administration goes into its term it is quite clear that persons will be able to distinguish the difference between a PNM and a UNC Government. So even though legislation is taken which may have been waiting to be implemented, even as they are implemented, when the time comes for the administration of those pieces of legislation you come to the fore. What do I mean when I say "you come to the fore?" In terms of the inability to internalize what is necessary, to make sure that those policy decisions are implemented in a way that benefit Trinidad and Tobago and as a result, at the end of the day, it is going to be quite clear. So that even as we agree on this Venture Capital (Amdt.) Bill, the point is, in its implementation, we would see how one is going to be able to implement it.

4.20 p.m.

Mr. Speaker, there are a couple of additional concerns that need to be addressed. My understanding of the Venture Capital (Amdt.) Bill is that there needs to be a little more education on this piece of legislation; its value and its benefit. It is not any aspersion on the existing Venture Capital Incentive Programme or on the administrators. I think one of the difficulties that has been encountered so far, is a lack of understanding and knowledge of the investors out there. So that, it seems to me, that is something that needs to be pushed.

I think there is need to look at some additional incentives to continue to see the extent to which we can attract some investment capital. There is also need to see how the credit unions and some of the other smaller investors can be so provided with some kind of a method to encourage them to be part of this whole venture capital situation. So that we are talking about some specific incentives for venture

capital companies. I know when the legislation was introduced, there was some concern about restricting interlocking shareholding. Given the size of our economy, while such a restriction may not be of concern in larger economies, I think in our economy we need to look at that. We tend to find that the people who have money and who are likely to be investing in this type of venture capital arrangement may be the same people who operate in other companies. This restriction needs to be looked at in the future, to be balanced against what were the concerns in terms of the restricting in the beginning.

There is a complaint that venture capital investors tend to meddle in the operations of the company. Since some expect returns quickly, when those returns are not forthcoming, there is a tendency for one to become more involved in the operations of the company. So that, perhaps, there needs to be some sort of a code of conduct that might be able to prevent the possibility of the undue meddling into the day-to-day operations of the company.

With these few words, as I said, we on this side, support the legislation.

I thank you.

The Minister of Trade and Industry and Minister of Consumer Affairs (Hon. Mervyn Assam): Mr. Speaker, I had not intended to make an intervention in this rather simple amendment to the Venture Capital Act, 1994. It is so straightforward, and so much in the interest of national development, particularly, as it affects the small business sector, that I thought such a Bill would have had absolutely no controversy in this honourable House this afternoon.

I was rather amazed that the Member for St. Ann's East went on a frolic. Neither a student of history nor a student of economics, he intended to dabble in both, and as a consequence of which, he quite clearly demonstrated his feet of clay. Mr. Speaker, the Members on this side and myself are very grateful for the support that he and Members on that side would give to this Bill. In fact, I was surprised that the Member for Diego Martin Central was not the lead speaker on that side, since he was the one who authored and piloted the Bill in 1994. In fact, he has shown great leadership and has really demonstrated a certain sense of responsibility, for which I congratulate him, in becoming himself, a venture capitalist; *[Laughter]* one of the two companies, I believe, that have been established in Trinidad, since the introduction of this Bill and the enactment into law. I think this is a tremendous thing for people to do. I am not speaking facetiously, I am very serious when I say so.

Mr. Valley: Do you want to make an investment?

Hon. M. Assam: Of course, I want to do that. I told him I would, but the hon. Member has to come with his hands clean to me. *[Laughter]* Whenever he comes to me he must come with his hands clean. I would, because I am interested in that kind of thing.

The problem with the Member for St. Ann's East is that he does not really understand what venture capital is all about. The last statement he made on venture capital was rather unfortunate. He said investors in venture capital want to get involved in managing the companies because they are in a hurry to make back their money. The very nature of venture capital is patient capital. It is synonymous one way or the other. So that you make an investment and you take time to recover your investment. The point is, the theory behind venture capitalism is that if you make five investments, you may lose in two or three, but the other two you would make enough to compensate for whatever losses you may have had in the other three. That is one of the things about venture capitalism.

What is even more important, the state, by virtue of the legislation, protects a venture capitalist from possible losses by the kind of tax breaks and tax credits that you are allowed in the very initial stages of investing your money in a capital venture fund. That is the whole purpose of the thing. The thrust is to ensure the development of the small business sector. More than that, the development of the services sector, which is the riskier type of business in the small business sector.

We have had an opportunity to see banks and other financial institutions lend money for things that they feel are less risky, because we live in an environment that is risk averse. Therefore, a financial institution or a bank would lend a would-be entrepreneur money for some business that has already been tested; businesses that have a track record and are not likely to lose money because they have a short horizon. Banks would lend you money for two or three years, maybe five years, within which time they expect to recover, but with venture capital operations, the horizon is longer term and the risks are higher, that is why the dividends are also higher in the long run.

Mr. Speaker: Hon. Members, the sitting of the House is suspended for half an hour.

4.30 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed.*

Hon. M. Assam: Mr. Speaker, just before we took the adjournment, I was attempting to develop the point that venture capital was developed in this country to address some of the deficiencies in the small business sector; a sector that has been starved for capital and in which the financial institutions were not very much disposed to assist. They had to pay the same kind of interest rates as the medium and larger businesses in the country. This was one of the purposes for the government setting up the Small Business Development Company and putting the various facilities in place so that small business could be developed.

As a matter of fact, we are attempting now to develop a leasing company that would remove some of the burdens imposed upon small business, whereby they would have to put out large capital outlays for equipment and machinery. The Small Business Development Leasing Company would be in a position to purchase this equipment and lease it to these small companies. They can lease the equipment and machinery over a period of time and then purchase it after it has been amortized.

In addition to this was what the Member for Diego Martin Central did when he piloted the Venture Capital Bill in 1994. As I was pointing out, venture capital is specifically dedicated to those businesses that have high risk and sometimes high mortality. That is why it is called patient capital, and when you hit it, you hit it big, and when you make on a particular venture it compensates for those areas in which you have lost over a period of time. It has now been very manifest and evident that the growth poles today are in the small business sector and in the services sector. These are the two areas that are needed to provide higher levels of employment in the country and to generate foreign exchange through exports.

If you notice, one of the objectives of the Bill is to make certain amendments for the purposes of improving the administrative functions of the Venture Capital Incentive Programme, and ensuring the fulfilment of its objectives to channel resources into the small business sector and export-oriented business sectors. That is the essence of the Bill, the *raison d'être* of the Bill. It is the quintessential purpose of the Bill, Mr. Speaker.

I would have thought that the Member for St. Ann's East would have addressed his mind to these noble purposes which the mover of the parent legislation, the Member for Diego Martin Central, intended, and which this administration, having seen some flaws and deficiencies—this is casting no aspersions on the Member for Diego Martin Central, because with the effluxion of time, all legislation need to be reviewed and revisited to determine their efficacy,

effectiveness and the results intended when they were passed. I did this some time ago. The Free Zones Act has gone through many incarnations, as you know, Mr. Speaker, and I had the honour to do another amendment in order to give the Free Zones Company much more flexibility and efficiency in its ability to attract more foreign investors. As a result, the purposes of the Free Zones Company to attract investment, create jobs and to create export-oriented products could be attained.

The purpose of the Venture Capital (Amdt.) Bill is very similar in nature, but there is another dimension to it. As I said before, financial institutions are not in the business of lending money to entrepreneurs in new types of ventures and businesses in untrammelled and unchannelled waters. So they go into neat compartments and they lend into businesses which are not risky because they are generally risk averse. With the coming into being of all the opportunities associated with the services sector, Mr. Speaker—particularly for the small entrepreneur—there needs to be instruments, institutions, mechanisms, legislation, and incentives in place, and Government must be the facilitator and the catalyst.

Government must provide the environment for this to develop so that jobs could be created, so that new businesses could be developed, and so that the country's economy can grow. It is, therefore, in this vein that we need the adjustment and amendment to the Venture Capital Act, so that people like the Member for Diego Martin Central who has—and I commend him—got involved in this kind of thing would insure that his investment is a success, and the people involved with it will be a success, and it will benefit the country as a whole.

I just came back from a seminar in Curacao put on by the Port of Spain Central Rotary Club in collaboration with the Curacao Rotary Club, and the theme was, "The services sector and its possibilities beyond the year 2000". It was an eye opener for me to see the possibilities of the services sector in the financial services; in the engineering services; in the telecommunications services; in the informatic services; in the data entry services; in the travel services; a whole range of possibilities where, at this point in time, the normal financial institution and the normal financial channels would not be interested in putting money. This is where the venture capital companies would be able to put money into these "risky ventures"; "ventures that had not been tried and tested", and carry these ventures forward, so the intended growth pole we see will yield the results of employment, foreign exchange generation, and growth in the economy.

I am amazed, to some extent, that the Member for St. Ann's East is unaware of the role of the state. If he had read the recent report put out by the United Nations

Development Programme, he would have seen that there was a whole set of treatises on the role of the state. There was certainly convergence in the thinking in nearly every one of the essays in this document in terms of the role of the state. The role of the state, in essence today, is to be an effective state, delivering and providing human security. That is the essence of the role of the state today, and this Government, like previous governments—it started with Mr. Chambers when he started the Structural Adjustment Programme; it continued with Mr. Robinson with the NAR; and Mr. Manning with the PNM—continues to stay the course because we feel that the macro economic policy framework started many years ago, is a sound policy framework that will take Trinidad and Tobago into the 21st century and make us a competitive nation.

If you read the competitive report which I received recently, a small country like Singapore—a country of one sixth the land space of Trinidad and Tobago at low tide, as they say—being number one on the competitive charts for the last four years, beating the pants off the United Kingdom, United States, Switzerland, Germany, and Japan. A tiny country, and it is doing it, in large measure, because of the highly skilled, highly trained, highly professional workforce; the human resource development that has taken place, and the development of their services sector. That is the formula that has done the trick for them. They have invited foreign capital and developed a lot of venture capital schemes in order to promote economic growth and development in key areas where they have established niche markets throughout the international marketplace.

5.15 p.m.

This is what this Government is attempting to do although people have been pooh-poohing our attempts to transform Trinidad and Tobago into a total quality nation. Unfortunately, I read some editorials indicating that the Prime Minister was talking pie in the sky and we are trying to transform Singapore into Trinidad and Tobago. That is not the point. What we are trying to say is Singapore is a model and one that you can look at. Trinidad and Tobago will never become a Singapore, but it is certainly a model that one can look at to see how this tiny country—in the backwaters of southeast Asia—has been able to transform itself in a 30-year period out of the ravages of poverty, illiteracy and communist threat and, is today an economic giant. That is what we are looking at! How did they do it? I just described it a few minutes ago.

Therefore, the macro economic policies of this Government are certainly in tune and in sync with our micro economic thrusts, contrary to what the Member

for St. Ann's East was attempting to suggest. As I said earlier, he does not understand economics and, therefore, he should stay out of it. My mother used to say, "Cockroach must not get into fowl business". That is what he attempted to do. He cited the question of the ADB. What does the ADB have to do with the question of the relationship between state enterprises and the private sector? He said the state's behaviour is such that it raises doubt in the minds of the private sector as a consequence of something that happened in the ADB.

If people borrow money from the ADB, whoever they may be, they could be high and mighty, they could be low and uneducated, the point is that once one borrows money, whether it is from the state or from the private sector, one has an obligation to repay. If one cannot repay, one has the obligation to go in and say, "I have run into some difficulties, the original business plan that I presented to you when I got the loan has not succeeded and, as a consequence, I want to get some rescheduling, some new terms and conditions and, therefore, if I have to pay off the loan in 10 years I want a longer horizon, maybe 12 or 15 years at so and so terms and conditions".

Most financiers and bankers, if one puts to them a viable, credible alternative to the original, would accept it once one comes to them, as I said, with clean hands. One must go with clean hands for them to accept it. But do not tell me that one borrowed money under whatever guise, whether it is on a corporate or individual name, or whoever it is, and one has not repaid any money, either principal or interest for 15—17 years. The minister is responsible for an institution—he is responsible both to the Parliament and he is a representative of the people. You are telling me that he must not indicate to the national community that there are problems in an institution that reports to him and there are some delinquencies existing with people who are parading at the highest echelons of society.

You are telling me that there is a problem there with regard to how the private sector will view private enterprise. It seems to me that the accent and the emphasis should not really be on the disclosure, but that there are people in high places in this society who are hiding behind titles and status and not honouring obligations to the state and state institutions. That is the central question that we must address in dealing with anything, whether it is the ADB or any other institution.

Mr. Speaker, they talk about disclosure. You know, they have very short memories and the first thing they will say is, this is a new PNM and that happened with the old PNM. When one looks at the behaviour of that Opposition Bench, they

are identical to the old PNM. I see no difference. It is almost like black faces and white masks. It reminds me of Frantz Fanon. You people are masquerading! Black faces with white masks, that is the thing! There is no difference between the old and the new PNM.

In this Parliament I have sat on the public benches and I have heard them read out the medical records of a man called Captain Hernandez of BWIA; that PNM Government. The Member for San Fernando East was a Cabinet minister at the time and he sat in this Parliament and allowed his colleague to read out the personal, confidential medical history of a BWIA pilot, and they are talking about the relationship between the private sector and the public sector.

Very recently the Member for Diego Martin West requested, through a question in this Parliament, all the people who had revolving loans with this Government. He requested it! And the minister had to come and reveal everybody's name; lawyer, doctor, MP, whoever it was. He was forced to come and reveal everybody's name. The Member for Diego Martin West asked this Parliament and the minister responsible for the information, had everybody's name called and the whole list was printed in all the newspapers of this country, but they want to talk about the relationship between the private sector and the public sector and confidentiality of information. You are blowing hot and cold at the same time. Hypocrites! Total hypocrites! Oh pardon me, thou bleeding piece of earth, that I would put up with this bunch of hypocrites! *[Laughter]*

I must credit the Member for St. Ann's East for raising two interesting points which I think deserve consideration because I like to be fair. I think he raised the point about additional incentives. I think that is an important point and I am sure that the acting Minister of Finance, maybe not at this time, would obviously speak to the substantive Minister of Finance with respect to the whole question of additional incentives. Because today, Mr. Speaker, as you know, the name of the game is competition. The kind of environment and incentives that one provides, whether local or foreign investors, will be to the extent of how much investment one would get, particularly in the area of risky investment and venture capitalism. So, I throw it out for what it is worth.

In acknowledging the point made by the Member for St. Ann's East, I think the acting Minister of Finance should bring this to the attention of the substantive Minister of Finance because we want more and more investment, particularly in this critical area of venture capitalism so that those areas that we need to develop will get the necessary capital to do so and thereby provide the employment, the

necessary export orientation for this economy to grow and for us to remain and become a competitive society. I credit him with a good point. It is a pity that he is not here to accept the plaudit.

The other point he made was interlocking shareholders and I think it is also a good observation, but this is a rather difficult area to deal with because this is a small society. We have a small pool of investors, not many people get involved in investing and if they invest, even on the primary market, they soon sell their investments on the secondary market to people who can give them a premium. Therefore, as a consequence, the pool of investors remains small and in the same hands and there is this interlocking shareholding in different kinds of ventures in this society. Until our emerging capital market becomes a mature capital market—something that the Member for Diego Martin Central probably understands and something that he probably should have asked his Minister of Finance in his administration to look at; how to accelerate the development of the emerging capital market of Trinidad and Tobago to make it a mature market, a Caribbean market, a Latin American market so that we can aggregrate the pool of investible funds in areas that are most needed to create jobs and to develop industries of an export orientation nature.

That is the kind of thing that they should have been doing when they were in office, not come here today and quote the Member for Oropouche in some kind of silly exercise in futility. Although he was quoting the Member for Oropouche from the *Hansard*, it was making sense and the Member for St. Ann's East did not even understand that he was reading something that was making sense. It is so unfortunate. That is the tragedy of the Member for St. Ann's East.

That is where we should be going and, therefore, I accept the observation of additional incentives and I accept the observation that some duty of care should be exercised and some form of regulation should be put in place with respect to interlocking shareholders and interlocking directorates because of the smallness of the economy and because our capital markets are still immature and have not burgeoned out into the kind of market that we need to sustain the kind of development that is required of Trinidad and Tobago.

5.25 p.m.

Mr. Speaker, I want to give the assurance to Members opposite and particularly the Member for St. Ann’s East—because he seems to think that the Government’s macro economic policy framework is failing—and I want to tell him that if he looks at all the reports from the Central Statistical Office, the Central Bank and

other reliable sources he will see that the indicators are very, very healthy. I well remember just before we went into recess my distinguished colleague, the Member for Diego Martin Central, attemped to deal with a slight aberration that took place in the first quarter of 1997 and I told him be patient to the last. Almost like Caesar, "friends, Romans, country men, lend me your ear", be patient to the last. When the results came out at the end of June at least he had some decency when I met him in the tea room last week to tell me that yes, your figures are looking good.

Mr. Valley: No, no, no. *[Laughter]* Mr. Speaker, he completely misunderstood what I was congratulating him for. I was congratulating him on the trade initiative, the fact that the manufacturers are visiting other countries and so forth. I just want to tell him—I do not really want to speak in this meeting—that he has to wait. If the Member looks at the figures last year he will see that they have changed. Those are very preliminary figures, he should ensure that they are firm before he starts jumping to conclusions.

Hon. M. Assam: I always like to listen to the Member for Diego Martin Central. He is such an apologist for himself and his administration that failed. Notwithstanding that, the important point I was trying to make is that the macro economic policy is sound, the variables are sound, the indicators are healthy and we have been moving inexorably to higher levels of growth, higher levels of indifference curves, where we will provide greater goods and services and a better quality of life for the peoples of Trinidad and Tobago. Already it is working and you saw where unemployment fell to 14.5 per cent, Mr. Speaker. *[Interruption]* I know you read the book of "Prophets" but you see, Mr. Speaker, I believe in the book of "Joel": old men dream dreams, young men, like me, see visions. *[Desk thumping] [Laughter]* So let him continue to read the book of Prophets, I will read the book of Joel. You have predicted it, but we have done it, that is the important thing, and we will continue to do it. In the next three years that we have the honour to lead this country and the country continues to repose confidence in us, you will see the heights to which we will take the economy of Trinidad and Tobago.

With these few words, Mr. Speaker, I support this Bill and thank you for the opportunity given to me. *[Desk thumping]*

Mr. Roger Boynes *(Toco/Manzanilla)*: Mr. Speaker, let me just for the record, indicate to the Member for St. Joseph that the Minister who piloted the Venture Capital Act 1994 was, at that time, the hon. Minister of Finance, Mr. Wendell Mottley, whose reputation remains impeccable in this country. *[Desk thumping]*

Let me indicate that we in fact support the amendments that have been put forward to this House here today.

Mr. Speaker, I commend the previous administration for their foresight in ensuring that the Venture Capital Bill 1994 was in fact passed in 1994 because it was the vision and the foresight of that particular administration with a view to ensuring that small business develops in this country. This Government, in October of 1996, launched the Venture Capital Incentive Programme which added to the foundation that was laid in 1994. So the culmination of the two is in fact necessary towards the enhancement of the small business sector and the medium sized businesses in this country.

Let me just say that the purpose of the amendments today is to add to the Venture Capital Act, to ensure that there is a body corporate in the administrator in the Venture Capital Incentive Programme, to ensure that the administrator has some teeth so that he can supervise and ensure that the whole incentive programme is conducted in a manner that will augur well for the country as a whole. Mr. Speaker, the Venture Capital Incentive Programme is an initiative which goes to assisting in the development of non-traditional sectors of the economy, and it also addresses the high level of failure among small and medium-sized businesses. In my own constituency what we find happening is that there are a number of small businesses operating. However, because of the traditional type of financing that they are exposed to, they go to the banks and they try to operate within the whole framework of that debt financing. They are under pressure because they have to tend to their interest, they have to tend to their loans, they have to repay the principal. While they are trying to expand and grow or trying to catch themselves you find they are under pressure to repay their loans. So, this is why we find, in some instances, in my constituency some of the businesses are going under because they have not been exposed to the type of equity financing that this Venture Capital Act and the implementation of it by virtue of this amendment will provide for them. So, we on this side, without a doubt, commend this amendment. We also commend the initiative by the former administration and the understanding of this particular administration to continue what was laid down before.

Mr. Speaker, financing for business has normally been left up to, as I mentioned earlier, debt financing and, in my particular constituency, what we recognize as an essential criterion to improving the success of the small business and what is critical for them to understand is that a proper education system must

be put in place as it relates to the venture capital system. What the administrator should do is hold various seminars to ensure that businessmen throughout the length and breadth of this country understand exactly what this whole programme is about. Persons who are willing to invest must understand quite clearly the various credits from which they can benefit if they were to invest in these investee companies. The tax incentive is 35 per cent at present.

5.35 p.m.

In reality, when you look at financing for the expansion and development of these small businesses, they require a different type of capital. The need, as was mentioned earlier, is for patient capital injected by investors who are willing to forego an immediate quantifiable return in exchange for the prospect of substantial capital appreciation in the medium to long term.

What one has to understand is that one can invest in this whole incentive programme for approximately five to 10 years. It does not go longer than that. One has to sell thereafter. In return, the type of capital returns that one would get would be very good. One has to look also at the type of tax credit to which one would be entitled. So with the culmination of everything, it is a very good investment.

Normally, firms in the start-up and expansionary phase have little or no alternatives for financing their developments other than by way of debt. Often, conventional equity financing is neither suitable nor available since the targeted investments are either new idea companies, process or service, that lack the performance history.

What this type of incentive programme is targeting are companies which are new on the market, companies which do not have a cash flow, a performance track record; new companies with a vision, with ideas, with young and old people who can really get together with a proper idea and build an empire. That is what is required. They need funding and when they try to access the traditional funds available, they are asked the questions: “What is your track record? What is your balance sheet? What is your cash flow?” And they are embarrassed because they cannot produce that information. This type of equity financing gives these companies with a vision; with the belief that they can make something of themselves, the ability to use equity financing and really and truly develop themselves, hence developing the country as a whole.

Venture capital investors address these issues through a unique arrangement with the investee company which involves essentially three components. Firstly, an

equity participation of the venture capital investor by means of direct purchase of stock in the investee company: "I want to purchase or invest in a company. I can take my finances and invest in a company and purchase equity, stock, shares in that particular company."

Secondly, it contemplates a long-term investment horizon since significant returns can only materialize after a period of five to 10 years. So it gives the investee company an opportunity to catch itself, an opportunity to use these funds for a period of about five to 10 years to build itself. So after five to 10 years it can repay the moneys which have been invested in it and still maintain itself as a going concern.

Thirdly, it contemplates an active ongoing involvement in the investee company in the form of technical and managerial expertise. What this also does, the whole programme contemplates the investors having the opportunity to ensure that the investee companies are doing well. They have shares in the investee companies, so much so that they have an opportunity to utilize their expertise and skills so that the investee companies do not fail, because it is in the investors' best interest to ensure that the companies succeed.

Returns on a venture capital investment are typically in the form of capital gains and are directly proportional to the investor's expertise in picking and nurturing a winner. The investor looks at the various types of small businesses and he picks out a winner that he feels his money could really make a difference and could add to the success of that particular investee company.

The Venture Capital Act of 1994 and the Venture Capital Regulations of 1996 govern this Venture Capital Investment Programme. The cornerstone of this programme is the incentive of 35 per cent of the amount invested by each investor in a venture capital company. Investors may be individuals or corporations. The venture capital company is formed specifically for the purpose of making equity investments in qualifying investee companies.

Individuals and companies interested in establishing a venture capital company must:

(1) become incorporated under the Companies Act;

(2) must have at least $50,000 worth of paid-up capital;

(3) must have an authorized capital of not less than $5 million and not more than $20 million;

(4) be registered with the office of the Administrator;

(5) raise at least $500,000 in paid-up capital and make investments within one year.

If a company has registered with the Administrator, he must, within one year, have been able to raise the sum of $500,000 in paid-up capital. Initially, the Venture Capital Act of 1994 contained the clause which provided for the paid-up capital to be $1 million. What this amendment seeks to do is to reduce the paid-up capital to $500,000, thereby encouraging the registering of venture capital companies so that they would be able to lend to more investee companies, thus stimulating more growth and development in the nation as a whole.

(6) They must invest at least 80 per cent of their equity in one or more investee companies by the end of the second year.

It does not contemplate that the 20 per cent would be abused in any way. The 80 per cent must be invested in investee companies and the other 20 per cent would go towards obviously paying for the administration, the fees for running the venture capital company. It could be held as a fixed deposit, thereby ensuring that the 20 per cent is earning money as the period goes along.

Once a venture capital company has been registered with the office of the administrator, the administrator would issue the tax credit certificate to each venture capital shareholder within 45 days. Therefore, it is something that the investors must understand. They must know that it is not after a five-year period they would, in fact, obtain this tax credit, but they would get a certificate after 45 days of their investment.

5.45 p.m.

Thirty-five per cent. That is a very good incentive and I join with my colleague, the Member for St. Ann's East, in asking that the acting Minister of Finance, the Member for Caroni East—I would have thought that the Member for Oropouche would have been the acting Minister of Finance—consider more incentives so that it would stimulate growth and development in the small business sector.

Presently, from my initial search, there are two venture capital companies that are registered: the Prudent Venture Capital Company Limited and the Add Venture Capital Fund Limited. Let me take this opportunity to commend the Member for Diego Martin Central for being part of the pioneer movement—he is leading by example—and showing the way forward. I urge Members present to put

their money where their mouths are and invest in these venture capital companies to show the country that they are prepared to lead by example, as it were.

Mr. Speaker, a company desirous of becoming a qualifying investor company must register with the Venture Capital Incentive Programme and must meet basic criteria as set out in the Act. An investee company may either be a start-up company or an existing company. Firstly, it must be registered or incorporated under the Companies Act or be designated a Caricom enterprise under the Caricom Enterprises Act; and secondly, it must have fully paid-up capital of less than $3 million and employs no more than 75 employees. I would come to the point of the company not being able to employ more than 75 employees in my winding-up because I have a problem with that particular requirement.

Funds received by the investee company from the venture capital company may be used for both capital expenditure and working capital. However, such funds cannot be used for lending, purchasing of securities, acquiring land, entering into non-arm's length transactions or for investments outside of Trinidad and Tobago, except where the investment is directly in support of the activities of the investee company.

Mr. Speaker, it is very important that people understand this. Businessmen cannot acquire moneys from the venture capital company to be used for lending purposes, acquiring of land, house and so forth. It must be directly related to the functioning of the business as a going concern.

The venture capital company is required to maintain its investment for a period of at least five years, after which the investor may effect an appropriate exit opportunity. This may be accomplished through the sale of the venture capital company's interest back to the owner of the business, to a third party or through a public offering of the company's stock. In addition, a venture capital company can only hold an investment for a period not exceeding 10 years.

The Venture Capital Act prohibits venture capital investment in those categories of business that historically have not had a problem in attracting capital for investment. The incentive programme, thus, will encourage the development of the vibrant non-energy sector in non-traditional industries because those businesses that take part in the energy sector have no problems in attracting financing, but the non-energy sectors—for example, the eco-tourism sector, yachting services, agri-processing, entertainment and horticulture sectors, which are so important in the area of Toco/Manzanilla—would benefit tremendously from this type of funding.

The incentive programme offers the venture capital company, and the investee company alike, the opportunity to generate considerable financial returns while at the same time addressing the national imperatives of economic stability, job creation, development of a vibrant business environment and the creation of wealth. It is a unique example of the state/private sector collaboration geared towards capital market development and stimulation of the domestic economy.

Venture capital has successfully enabled small businesses to acquire the equity needed to generate a stream of economic benefits in other parts of the world. A survey of 428 companies of the National Venture Capital Association in the United States of America, revealed that those companies created a net of 92,000 highly skilled jobs during a six-year period from 1985—1991, and paid over US $1 billion in taxes. In the 10 years that a similar venture capital programme has been in existence in British Columbia, Canada, over 300 venture capital corporations have been registered. The venture capital companies have raised in excess of over Canadian $300 million of new equity from over 4,000 venture capital investors, and have invested in 266 small businesses.

Mr. Speaker, when I look at the proposed amendments to the Act, particularly, clause 4, which provides for the creation of an entity called the Venture Capital Incentive Programme to administer the provision of the Venture Capital Act and Regulations, it is seeking to eliminate the misunderstanding that the Act was intended to regulate the entire venture capital industry as opposed to merely those venture capital companies participating in the incentive programme.

Under the Act, the administrator administrates the venture capital companies under the incentive programme. The proposed amendment stated in clause 8 seeks to remove the limit of $1 million that the venture capital company must raise within a period of 12 months and reduces it to $500,000, thereby providing the environment for more than two venture capital companies to be registered. I am suggesting, as before, that if the Minister of Finance could even add more incentives to this programme we would see many more than two venture capital companies being registered.

5.55 p.m.

Clause 5 designates the incentive programme as a body corporate. I observed that when my friend made that point the other side responded with the entire business of the Agricultural Development Bank. Suffice it to say, that it is very important regardless of whether we want to understand, admit it or not, the

confidentiality of the customer, the client and the relationship with the body corporate—it may be a bank as it were—is very much sacred and should be respected and honoured at all cost. If, for instance, anybody wants to use this Parliament to talk about people's reputation, one should simply step outside the Parliament's door and repeat the same statements word for word.

I am glad to see that the Minister has deleted clause 7(7) and reduced the period of secondment from five to two years. It makes sense. I wish to also draw to the attention of the Acting Minister of Finance, the Member for Caroni East, clause 9(a) which reads as follows:

"deleting the definition of 'Administrator' and substituting the following:

> 'Administrator' means the Administrator of the Venture Capital Incentive Programme appointed by the President under section 3 of the Venture Capital Act;"

It should be the Venture Capital Act, 1994 or if one wants to take out the Venture Capital Act entirely, it could be substituted by just the Act. Probably, it is a typographical error. I would also like to propose more recommendations. The amendments in this Bill are very essential to giving some teeth to the Act and the regulations.

When one looks at the qualification of an investee company and sees one of the requirements being that it must not have more than 75 employees, I am simply suggesting that this cannot be one of the criteria for determining whether or not an investee company qualifies as such. There are some companies, for instance, in the manufacturing sector, where although they may be small in size, they sometimes employ over 100 persons. The fact of the matter is, it is a small company. If one could look at other means of suggesting whether or not a company qualifies as an investee company, the number of persons is not an adequate indication as to what will be a small or large company. A company perhaps, in the energy sector may require about 25 persons and it may qualify as a large company. Perhaps, we could lay down the criteria for the investee company. I am also looking at the fact that when we look at various sources of funding, a major source of venture capital companies worldwide has been large institutional investors such as pension funds, insurance companies and mutual funds which mobilize funds from a large number of investors with proper fund management, combined with a consistent fiscal policy. These institutions would provide for the mobilization of pool capital into the productive sectors of our economy.

I also wish to raise the point of preferred share participation. The investee company must only be able to sell shares up to 50 per cent, that is, ordinary shares with voting rights and so forth. But, sometimes the investee company needs more capital. The Bill is silent on this. If one could be a bit clearer with respect to the preferred share companies can raise via the route of preferred shares and the understanding—do not get me wrong—is that it can raise funds via preferred shares at present—the Bill is totally silent on this. In order to ensure that the correct thing is done and to ensure that there is a smooth operation of the Act, I am simply suggesting that the Minister could look at ensuring that the Bill makes it clear that the investee company could raise funds via preferred share participation.

We on this side, without a shadow of doubt, support this proposed legislation brought here today. It has been this side's initiative; it has been taken further. With the passage of time there will be a need for the amendment of legislation. Make no mistake, we on this side are here to encourage and stimulate small business activity and to ensure that this Venture Capital Incentive Programme is a success in Trinidad and Tobago. We can see many small businesses benefiting from equity funding and thereby creating many jobs throughout the length and breadth of this county. We ask kindly, in the best interest of this country, that the Government listens to some of the contributions that came out of this side so that there can be an Act and an incentive programme that are well on the way to turning around this country and making sure that Trinidad and Tobago is one of the greatest countries, not only in the Caribbean and Latin America, but in the world as a whole. I thank you, Mr. Speaker.

6.05 p.m.

The Minister of Public Utilities and Acting Minister of Finance (Hon. Ganga Singh): Mr. Speaker, I thank hon. Members who participated in this debate. It is clear that we have bipartisan support for this Bill. We must understand the historical reality of this Bill. The Act of 1994 was a strategic intervention in the economic landscape of this country. [*Laughter*] Through the effluxion of time evolution has been taking place. Today is a turning point in that process of evolution.

The sentiments expressed by the Member for St. Ann's East with respect to additional incentives and the issue of the interlocking shareholding and the issue raised by the Member for Toco/Manzanilla with respect to the ratio of workers are issues which are being dealt with at some level of implementation in the process. As the evolution of this economic vehicle for change in the sector takes place, be assured that there would be further legislative amendments.

In these circumstances, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clauses 1 to 6 ordered to stand part of the Bill.

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Mr. Singh: Mr. Chairman, I beg to move that clause 7 be amended as follows:

(a) In subsection 3 of the proposed new section 3A, delete the words "five years" and substitute the words "two years".

(b) Delete subsection (7) of the proposed section 3A.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8.

Question proposed, That clause 8 stand of the Bill.

Mr. Singh: Mr. Chairman, I beg to move that clause 8 be amended by inserting the words "and maintain" after the word "have" in line 6.

Mr. Valley: Mr. Chairman, I propose that we delete clause 8 and replace it by stating that the Act is amended in section 11 by repealing subsection (1)(b).

The effect of that would be to have the equity capital of $500,000 after the first year and maintaining that throughout. If you look at the amendment to clause 8 the intention was $500,000. The existing Act talks about having and maintaining. Under the new Companies Act a company can now buy back its shares. If we make the change which is proposed, then having equity of $500,000, the company can buy back its shares and get down to a position under $500,000. I do not think that was the intent of the change.

Mr. Singh: I am advised that with the drafting style there is need to go with what is proposed. The words, "and maintained" can be included to take care of those concerns.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

6.15 p.m.

Clause 9.

Question proposed, That clause 9 stand part of the Bill.

Mr. Boynes: Mr. Chairman, I am looking at the last word of the last line of clause 9(a). Should it not read "Venture Capital Act, 1994"? To which Act are we referring?

Mr. Singh: I beg to move that clause 9 be amended as follows:

Act 22 of 1994	Include, after the word "Act" at the end of subclause (a), the word, "1994".

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Explanatory Note.

Mr. Singh: Mr. Chairman, there is an error in the Explanatory Note, in the paragraph which begins "Clause 8".

Delete the words "hundred thousand dollars" and replace with the words "five hundred thousand dollars".

Hon. Member: That is not part of the Bill.

Mr. Singh: It is not, but is better corrected here than elsewhere.

Question put and agreed to.

Question put and agreed to, That the Bill, as amended, be reported to the House.

House resumed.

Bill reported, with amendment; read the third time and passed.

ARRANGEMENT OF BUSINESS

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, we had indicated that we would have debated Bill No. 3 on the Order Paper, the Summary Courts (Amdt.) Bill, but we have decided to defer that to next week. We will now proceed with Motion No. 2 under "Private Business".

Agreed to.

QUARRY SUPERSTARS SPORTS AND CULTURAL CLUB (INC'N.) BILL

Special Select Committee Report
Adoption

Mr. Chandresh Sharma *(Fyzabad)*: Mr. Speaker, I beg to move,

BE IT RESOLVED that the House of Representatives adopt the Report of the Special Select Committee appointed to consider and report on a private Bill entitled, "An Act for the Incorporation of the Quarry Superstars Sports and Cultural Club and for matters incidental thereto".

By way of information, I wish to indicate that this club started functioning in 1983. The club is governed by a constitution which provides for an executive to administer its affairs.

Some of its aims and objectives are as follows:

To participate in sporting activities.

To encourage and display fellowship, good conduct and sportsmanship at all times.

To raise funds by special projects.

To participate in community work and render service to the needy.

To educate members in democratic procedures.

To provide recreation for members.

The club desires to be constituted into a body by private bill so that its aims and objectives could be more effectively achieved.

Seconded by Mr. Hedwige Bereaux.

Question proposed.

Mr. Hedwige Bereaux *(La Brea):* Mr. Speaker, I rise to make a short contribution on this Bill to provide for the incorporation of the Quarry Superstars Sports and Cultural Club. This club has its main base and operations in Quarry Village, Siparia in the constituency of La Brea.

I have followed the activities of this club closely and attend its functions from time to time. All the plaudits given to them by the hon. Member for Fyzabad are correct. They even deserve more than that. I think it is proper and fitting that the

club be incorporated so that it can carry on its work in a more efficient and productive manner.

I thank you.

Mr. C. Sharma: Mr. Speaker, the Member for La Brea deserves more than thanks. I also thank all Members.

Question put and agreed to.

Report adopted.

Question put and agreed to, That the Bill be now read the third time.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that this House doth now adjourn to Friday, October 17, 1997 at 1.30 p.m.

On that day, we hope to complete the Summary Courts (Amdt.) Bill, which is No. 3 under "Bills Second Reading" on the Order Paper, and the Cane Farmers Incorporation and Cess Ordinance (Amdt.) Bill, which is No. 6.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 6.25 p.m.